Post Dec. 16. 1874 Legal Intelligencer Filed 2 360

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~382.~~ 102

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE, D. P. BINGLEY, AND J. J. KRAUSS, BANKRUPTS, APPELLANTS,

vs.

ADRIAN ISELIN AND ISAAC ISELIN.

No. ~~383.~~—CROSS-APPEAL. 103 Reverse

ADRIAN ISELIN AND ISAAC ISELIN

vs.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 23, 1872.

Oct. D. 1874

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 246 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of James R. Clark, j'r, assignee, &c., of Henry E.. Dibblee & als., b'k'ts, appellant & resp'd't, against Adrian Iselin & Isaac Iselin, bankrupts, app'ts & resp'd't, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this thirtieth day of Dec'r, in the year of our Lord, one thousand eight hundred and seventy-two, and of the Independence of the said United States, the ninety-seventh.

[SEAL.] KENNETH G. WHITE, *Clerk.*

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this thirty-first day of January, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

GEORGE F. BETTS, *Clerk.*

New York, George F. Nesbitt & Co., printers, corner of Pearl and Pine streets, 1872.

3 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York.

James R. Clark, junior, of the city of New York, assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss, composing the mercantile firm of H. E. Dibblee & Co., bankrupts, brings this, his bill, against Adrian Iselin and Isaac Iselin, of the city of New York, carrying on business therein as bankers, under the partnership name of A. Iselin & Co., and against the said Henry E. Dibblee, David P. Bingley, and John J. Krauss, and thereupon your orator complains and says:

That as your orator is informed and believes to be true, by a decree of this court duly made, bearing date June 2, 1869, made on the petition of their creditors, which was filed in this court on Monday, May 3, 1869, the said Henry E. Dibblee, David P. Bingley, and John J. Krauss, composing said firm of H. E. Dibblee & Co., were duly adjudged bankrupts, under and by virtue of the act of Congress entitled, an "Act to establish a uniform system of bankruptcy throughout the United States, passed March 2, 1867." That such proceedings were thereupon had, that your orator was, as he is informed and believes to be true, on July 28, 1869, duly appointed by this court assignee of the said bankrupts, and thereupon by deed of assignment bearing date August 9, 1869, Isaiah T. Williams, register in bankruptcy, to whom, by order of the court, the matter of the said bankruptcy had been referred, conveyed

and assigned to your orator all the estate, real and personal, of the said bankrupts and each of them, with all their deeds and papers relating thereto according to the said act as by the proceedings aforesaid, now remaining on record in the clerk's office of this court, reference
4 being thereto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further shows unto your honor, upon information and belief, that on February 25, 1869, the said Henry E. Dibblee, without the knowledge or consent of the said David P. Bingley or John J. Krauss, made and delivered to the said Adrian Iselin and Isaac Iselin, a confession of judgment and affidavit thereto annexed in the words and figures following:

Statement and confession of judgment.

Supreme court, city and county of New York.

ADRIAN ISELIN AND ISAAC ISELIN, PLAINTIFFS,
against.
HENRY E. DIBBLEE, DAVID P. BINGLEY, AND JOHN J. KRAUSS, defendants.

We do hereby confess judgment in this action in favor of Adrian Iselin and Isaac Iselin, for the sum of fifty-four thousand one hundred $\frac{00}{100}$ dollars, and authorize judgment to be entered therefor against us. This confession of judgment is for a debt justly due to the plaintiff arising upon the following facts:

The plaintiffs are, and at the times hereinafter mentioned were copartners in business as bankers in the city of New York, under the firm name of A. Iselin & Co., and the defendants are and were at said several times also copartners in business in said city, under the firm-
5 name of H. E. Dibblee & Co. On the twentieth day of February, 1869, the plaintiffs loaned and advanced to the defendants, as such copartners as aforesaid, and to be used and employed by them in their firm business, securities of the cash value of seventeen thousand five hundred $\frac{00}{100}$ dollars, and on the 23d day of February, 1869, other securities of the cash value of eighteen thousand six hundred $\frac{00}{100}$ dollars, and on the 24th day of February, 1869, other securities of the cash value of eighteen thousand $\frac{00}{100}$ dollars.

The cash value of all said securities being the sum of fifty-four thousand one hundred $\frac{00}{100}$ dollars, which sum is now due and owing by us, the said defendants, to the said plaintiffs, the cash value of said securities having become immediately due from us to the plaintiffs at the time when the same were respectfully loaned and advanced as aforesaid. We have not paid any part of the said cash value of said securities, but are now justly indebted to the said plaintiffs therefor in the said sum of fifty-four thousand one hundred $\frac{00}{100}$ dollars, for which sum we hereby confess judgment as aforesaid.

HENRY E. DIBBLEE,
Defendant.
H. E. DIBBLEE & CO.

CITY AND COUNTY OF NEW YORK, *ss:*

Henry E. Dibblee, one of the defendants above named, being duly sworn, says that the above statement and confession of judgment, and

the facts therein mentioned are true to his own knowledge; and further he says not.

HENRY E. DIBBLEE.

Sworn to before me this 25th day of February, 1869.

FREDERICK BULL,
Notary Public, N. Y. C. and Co.

6 And your orator further shows unto your honor, upon informat'on and belief, that afterwards, on April 30, 1869, the said defendants, Adrian Iselin and Isaac Iselin, delivered the said confession and affidavit to, and filed the same with the clerk of the city and county of New York, being ex-officio clerk of the supreme court of the State of New York, which said clerk thereupon, at the request and by the direction of the said defendants Adrian Iselin and Isaac Iselin (but without any authority from the said David P. Bingley and John J. Krauss, or either of them,) entered in the judgment-book of the said supreme court in custody of the said clerk a judgment in the words and figures following, to wit:

Supreme court, city and county of New York.

ADRIAN ISELIN AND ISAAC ISELIN, PLAINTIFFS,
against
HENRY E. DIBBLEE, DAVID P. BINGLEY, AND John J. Krauss, defendants.

On filing the within statement and confession, it is adjudged by the court that the plaintiff do recover against the defendant the sum of fifty-four thousand one hundred dollars, with five dollars and 8 disbursements, making in all the sum of $54,105.00.

CHA'S E. LOEW, *Clerk.*

HENRY W. CLARK,
Plaintiff's Attorney.

Dated 18 .
Filed April 30, 1869, at 12hr. 30m. (C. E. L.)

7 And your orator further shows unto your honor, that thereupon said clerk, by like request and direction, docketed the said judgment as a judgment against the said three bankrupts; and thereupon the said defendants Adrian Iselin and Isaac Iselin, caused to be issued out of the said supreme court an execution on said judgment against the property of said three bankrupts, for the amount of the said judgment, 54 thousand 1 hundred and 5 dollars and interest, directed to the sheriff of the city and county of New York, and delivered the said execution to said sheriff on April 30, 1869, to be executed in due form of law; and thereupon the said sheriff on April 30, 1869, levied the said execution within his county upon the stock in trade and merchandise had and used by the said bankrupts in their business as copartners as aforesaid.

And your orator further shows unto your honor, as he is advised and believes, that the said judgment and execution were wholly void as against the said Bingley and Krauss, and only valid as against the said Henry E. Dibblee, and thereby the debt owing to the said defendants

Adrian and Isaac Iselin, mentioned in the said confession, became extinguished as a debt against the three bankrupts and their said firm, and the said judgment enured only as a judgment against the said Henry E. Dibblee individually, and the said debt became his individual debt.

And your orator further shows unto your honor, upon information and belief, that the securities mentioned in the said confession of judgment were delivered to the said Henry E. Dibblee for, and became the property of, said firm, and were, at or about the time of the delivery of the said confession of judgment and in the month of February, 1869, hypothecated by the said Henry E. Dibblee to divers banks in the city of New York, as collateral security for loans by said banks thereupon made to the said bankrupts' said firm upon promissory notes made by said bankrupts' said firm, amounting to the sum of forty-six
8 thousand dollars. That afterwards the said defendants Adrian Iselin and Isaac Iselin, but whether before or after the entry of said judgment your orator is ignorant, paid to the said banks the said loans and received from them the said securities, but whether they did this with or without any authority from the said bankrupts, or either of them, your orator is ignorant.

That on May 1, 1869, the said bankrupts, (the said Bingley and Krauss acting under the pressure and by duress of the said execution, and in ignorance that the said judgment and execution were only valid as against the said Dibblee individually, and that the debt of said firm was extinguished as aforesaid,) made and delivered to the said defendants Adrian Iselin and Isaac Iselin, a bill of sale of a large amount and value of bills receivable, and accounts owing to said bankrupts as copartners, and, in their said business, amounting, at the face thereof, to $47,839.52, and composing all the best and most available receivables of the said firm; and the said bankrupts at the same time paid to the said defendants Adrian Iselin and Isaac Iselin, 1,900 dollars in cash, and thereupon the said defendants Adrian and Isaac Iselin, accepted the said receivables and money, and said securities mentioned in said confession of judgment, which had been taken by them by said banks subject to their lien thereon for the money they had paid the said banks as aforesaid, in satisfaction of the said judgment and execution, and the same was thereupon cancelled and satisfied of record.

And your orator further shows, upon information and belief, that the said advance of said securities, hypothecated to the said banks, was made by the said defendants Adrian Iselin and Isaac Iselin, to enable the said bankrupts to borrow the said money from the said banks in order to, and the said bunkrupts did, apply the same, or in order to enable the bankrupts to apply, and they did apply other moneys to the payment of a large amount of indebtedness owing by said bank-
9 rupts to the said defendants Adrian Iselin and Isaac Iselin, of the amount of which your orator is ignorant.

And your orator further shows unto your honor that, in the months of March and April, 1869, or thereabouts, the bankrupts' said firm transferred to the said Adrian Iselin and Isaac Iselin other bills receivable, accounts, and assets belonging to the bankrupts' said firm, to the amount of $61,000 and upwards, but how much your orator is ignorant, as collateral security for other indebtedness or liabilities of the bankrupts' said firm, amounting to the principal sum of sixty-one thousand dollars or thereabouts, some portion of which had been collected and realized by said Adrian Iselin and Isaac Iselin at the time of the filing of said petition in bankruptcy, and the residue remained at that time in their

hands, of the further particulars of which your orator is ignorant. And your orator further shows unto your honor that the bankrupts made the following payments to the defendants Iselin, at the dates specified, to wit, 1869, March 23, $5,000; March 29, $5,000; April 2, $4,000; April 6, $3,000; April 30, $3,108.52, amounting to $20,108.52, which payments were made in payment of prior loans made by the said defendants Iselin to the bankrupts, as follows: 1869, March 5, $5,000; March 6, $10,000; March 8, $5,000. The said loans were made on call. The first two loans were secured by a confession of judgment, which was never entered of record, and by no other security; the third was not secured in any way whatever. The said confession of judgment was made by the said Dibblee alone, in the name of said firm of H. E. Dibblee & Co., in form, the same as the confession of judgment hereinabove set forth.

And your orator further shows unto your honor, upon information and belief, that on or about April 8, 1869, the bankrupts paid to the said Adrian Iselin and Isaac Iselin, the sum of $7,944.88, for certain interest on prior loans or other antecedent indebtedness of the said bankrupts' said firm to the said Adrian Iselin and Isaac Iselin. And your orator further shows unto your honor, upon information and belief, that the said Henry E. Dibblee made and delivered the said confession of judgment, and procured and suffered the said property to be seized on execution as aforesaid, and made the said several payments to the said defendants Adrian Iselin and Isaac Iselin, and the said bankrupts made the said bill of sale and transferred and conveyed the said receivables to the said defendants Adrian and Isaac Iselin, within four months before the filing of the said petition against the bankrupts, and with a view to give a preference to the said Adrian Iselin and Isaac Iselin, as creditors of the said bankrupts; and if the bankrupts gave any authority to the said Adrian and Isaac Iselin to take the said securities so received from said banks, or made any transfer to them of such securities, then the same was done with like intent and within the said four months. That the said bankrupts at the several times when the said confession of judgment was so made and delivered, and when the said property was suffered and procured to be seized on execution, and when the said several payments were made, and when the said bill of sale, and bills receivable, accounts, and assets were delivered, and when the said defendants Adrian and Isaac Iselin received the said securities from said banks, were insolvent and acting in contemplation of insolvency, and made the said several dispositions of the said property and each of them with a view to prevent the same from coming to their assignee in bankruptcy, and to prevent the same being distributed under the said act in payment of their debts, and to defeat the object of, and impair, hinder, impede, and delay the operation and effect of the said act, and to evade the provisions thereof. That at the several times of receiving the said confession of judgment, and of entering the same, and of issuing the said execution and levying the same, and of receiving the said payments, and the said bill of sale and other transfers, the said defendants Adrian Iselin and Isaac Iselin had reasonable cause to believe the said bankrupts to be insolvent, and to be acting in contemplation of insolvency, and that such payments, transfers, and dispositions of said property were made with the several intents above alleged, and that a fraud on the said act was intended.

And your orator further shows unto your honor, upon information and belief, that the said bill of sale, and payment of $1,900, and transfer of said securities from said banks was fraudulent and void, because thereby the said bankrupts being each, and their said firm being, insolvent and

in contemplation of insolvency, applied the partnership property of said firm to pay the individual debt of the said Dibblee, and the said defendants at the time of receiving such bill of sale had notice of such fraud.

And your orator further shows unto your honor that he is ignorant of the nature of the securities mentioned in the said confession of judgment, but that as he is informed and believes the same belong to your orator, subject to the amount loaned thereon by the said banks, and that the defendants, Adrian Iselin and Isaac Iselin, by paying the said loan and taking from said banks said securities, stood in the same condition as the said banks, immediately before such payments, did with reference thereto.

And your orator further shows unto your honor that upon the filing of the said petition in bankruptcy an injunction was granted by y honor restraining the bankrupts and the said Adrian Iselin and Isaac Iselin from all interference with the property of the bankrupts, which was served on the said Adrian and Isaac Iselin May 3, 1869; that a warrant was also at the same time issued by order of your honor to the marshal of this district, commanding him to take possession provisionally of the property of the bankrupts, under which certain of the moneys remitted by persons owing the bills receivable and accounts so assigned by said bill of sale came to the possession of said marshal, and the defendants obtained from your honor an order in the said bankruptcy, dated July 17, 1869, directing the marshal to deliver to the defendants Adrian and Isaac Iselin, the said bills receivable and accounts included in said bill of sale, and the proceeds thereof to be ascertained and determined by the clerk of this court as referee, by whose report, dated July 19, 1869, it was found that certain of the said bills receivable and accounts included in said bill of sale and the proceeds thereof, a list whereof is annexed to said report, amounting to $6,510.77, were included in said bill of sale; said marshal thereupon delivered the same to said defendants Adrian and Isaac Iselin, which order is therein specified to be "without prejudice to any right of the assignees or trustees to be hereafter appointed to recover the same of the said
12 Iselin & Co.," as by the proceedings aforesaid remaining of record in the clerk's office of this court, reference being thereto had, to which, for greater certainty, your orator prays leave to refer, will more fully and at large appear.

To the end therefore that the defendants and each of them may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and marked as by the note hereunder written they are respectively required to answer, that is to say:

(1.) What securities were delivered by the said defendants Adrian and Isaac Iselin, as stated in the said confession of judgment; whether the same consisted of Government or corporate bonds; and, if so, of what denomination; and whether the same bore any and what rate of interest, and whether any and what interest-coupons were attached thereto, and whether there were any and what other kind of securities so delivered, describing the same particularly?

(2.) Whether the said securities were hypothecated for any loan by the said Dibblee with any and what person or corporation, and when and for what amount?

(3.) Whether the defendants Adrian and Isaac Iselin, or either of

hem, afterwards, and when, became possessed of the said securities, or any, and what part thereof and from whom?

(4.) If the said defendants Adrian and Isaac Iselin, or either of them, did so receive the same, or any part thereof, whether they did so upon any and what request or authority or agreement of the bankrupts, or either, and which of them; and whether they, or either of them, received any assignment or transfer thereof, or of any and what part thereof,
13 from the bankrupts, or either, and which of them, and whether any such authority, agreement, or assignment, or transfer was in writing; and, if so, that they set forth a copy thereof.

(5.) Whether the defendants Adrian and Isaac Iselin, or either of them, at and immediately before the delivery of the said securities, as stated in the said confession of judgment, were creditors of the bankrupts, or either of them, or under liability for them, in any and what sums of money, and upon what consideration; and whether any and what portion of such indebtedness has been since paid by the bankrupts or either of them, and the dates and amounts of such payments; and that the title of the defendants Adrian and Isaac Iselin, to the said securities and moneys paid to them as aforesaid, and receivables assigned to them as aforesaid, may by the decree of this honorable court be decreed to be fraudulent and void as against your orater; and that the said Adrian and Isaac Iselin may be decreed to account for and pay to your orator as well the value of the said securities and interest, (less the amount for which the same were hypothecated for to the said banks, and interest,) and also all payments and transfers so as aforesaid since made by the bankrupts to the said defendants, Adrian and Isaac Iselin, and the value of the said receivables so assigned as aforesaid in March and April, 1869, or thereabouts, and by the said bill of sale, on May 1, 1869, and the proceeds thereof, and that such of the said receivables as shall not have been collected by the said defendants Adrain and Isaac Iselin, be by them transferred to your orator; and that the defendants Adrian and Isaac Iselin, pay all damages which may result from any loss of said debts, through their interference therewith, as aforesaid, together with the costs and charges by your orator in this behalf sustained; and that your orator may have such other and further relief against the said defendants as to your honor shall seem meet, and as may be agreeable to equity and good conscience.

14 May it please your honor to grant unto your orator the writ of subpœna to be directed to the said Adrian Iselin and Isaac Iselin, Henry E. Dibblee, David P. Bingley, and John J. Krause, commanding them by a certain day and at a certain place, and under a certain penalty therein to be inserted, to be and appear before your honor in this honorable court, then and there to perform and abide by such order and decree therein as the court may make. And your orator will ever pray.

JA'S R. CLARK, J'R, *Assignee.*

NOTE.—The defendants Adrian Iselin and Isaac Iselin, are required to answer all interrogatories. The other defendants are not required to answer any of the interrogatories.

CHARLES H. SMITH,
Solicitor, and of Counsel for Complainant.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

On this second day of October, A. D. 1869, before me came James R. Clark, junior, the above-named complainant, who being by me duly

sworn, did depose and say, that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

R. E. STILWELL,
U. S. Commissioner South. District of N. Y.

15 District court of the United States for the southern district of New York.

JAMES R. CLARK, JUNIOR, ASSIGNEE, &c., *against* ADRIAN ISELIN, ISAAC ISELIN, HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS. } In equity.

The joint answer of Adrian Iselin and Isaac Iselin, two of the defendants above named, lately doing business as bankers, under the partnership name of "A. Iselin & Co.," to the bill of complaint of James R. Clark, j'r, assignee of Henry E. Dibblee, David H. Bingley, and John J. Krauss, composing the mercantile firm of H. E. Dibblee & Co., bankrupts.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, answering, say:

16 That these defendants were copartners in business as bankers in the city of New York, under the partnership name of "A. Iselin & Co.," from the first day of February, 1868, to the first day of July, 1869, on which said last-mentioned day the said defendant Isaac Iselin retired from said firm, and ceased to be a member thereof.

That these defendants are informed and believe, and therefore admit, that the said Henry E. Dibblee, David P. Bingley, and John J. Krauss, composing the said firm of "H. E. Dibblee & Co.," were adjudged bankrupts as alleged in the said bill of complaint, and that such proceedings were thereupon had that the complainant was appointed assignee of the said bankrupts, as alleged in said bill of complaint, and that their estate, real and personal, was assigned to the complainant as alleged in said bill.

And these defendants further answering admit, that the confession of judgment set forth in said bill of complaint was duly made and delivered by the said bankrupts to these defendants as such copartners as aforesaid, on the twenty-fifth day of February, 1860, and further answering say, that on the delivery of the securities on the 21st and 23d days of February, 1869, respectively, as stated in said confession of judgment, the said bankrupts made and delivered to these defendants as such copartners confessions of judgment for the market value of the securities so respectively on such days delivered, which said confessions of judgment were destroyed when the said confession of judgment set forth in said bill of complaint was made and delivered as aforesaid for the value of all the securities delivered.

And these defendants further answering admit, that the said confession of judgment was subsequently, and on the thirtieth day of April, 1869, duly delivered to and filed with the clerk of the city and county

of New York, being ex-officio clerk of the supreme court of the State of New York, who thereupon at the request and by the direction
17 of these defendants, entered in the judgment-book of the supreme court the judgment set forth in the said bill of complaint; that the said judgment was duly and properly docketed by the said clerk as a judgment against the said three bankrupts; that thereupon these defendants caused an execution on the said judgment to be issued out of the said supreme court, against the property of the said three bankrupts, for the amount of the said judgment and interest, and directed to the sheriff of the city and county of New York, and delivered the same to the said sheriff, to be executed in due form of law, and that thereupon the said sheriff, on the thirtieth day of April, 1869, levied the said execution as alleged in said bill of complaint.

And these defendants, further answering, deny that the said judgment and execution were wholly void as against the said Bingley and Krauss, and only valid as against the said Henry E. Dibblee, as claimed in and by the said bill of complaint; but, further answering, say that the said judgment and execution were good and valid against all of the three bankrupts, and that the said execution was properly and lawfully issued against and levied upon the partnership property of the said three bankrupts, then composing the said firm of H. E. Dibblee & Co.; and these defendants deny that by the said judgment and execution the debt owing to these defendants, mentioned in the said confession of judgment, became extinguished as a debt against the three bankrupts and their said firm, and that the said judgment enured only as a judgment against the said Henry E. Dibblee individually, and that the said debt became his individual debt, as is improperly claimed in and by the said bill of complaint.

And these defendants, further answering, say that the question of the validity of the said judgment as a judgment against all three of the said bankrupts, and of the said execution, as an execution properly and
18 duly issued against and levied upon the partnership property of the said bankrupts, is not within the jurisdiction of this honorable court.

And these defendants, further answering, admit that the securities mentioned in the said confession of judgment were delivered to the said Henry E. Dibblee for, and became the property of, said firm, and were, at or about the time of the delivery of the said confession of judgment, and in the month of February, 1869, hypothecated by the said Henry E. Dibblee, acting, as these defendants are informed and believe, for and in behalf of his said firm, to divers banks in the city of New York, as collateral security for loans by said banks thereupon made to the bankrupts' said firm, upon promissory notes made by said bankrupts' said firm amounting to the sum of forty-six thousand dollars.

And these defendants, further answering, say that, afterwards, and on the first day of May, 1869, these defendants, as such copartners as aforesaid, acting with authority from the said bankrupts, paid to the said banks the said loans so made as aforesaid, and received from them the said securities, and thereupon credited to the said bankrupts, on account of the amount secured by the said judgment, the sum of eight thousand one hundred dollars, being the difference in amount between the actual value of the said securities on the days when they were so advanced, and the aggregate amount of the said notes; and that thereupon the said securities became the property of these defendants, as such copartners, and the said judgment then stood as security for the

balance remaining unpaid thereon, to wit, the sum of forty-six thousand dollars.

And these defendants, further answering, say that had not the said authority been given to them by the said bankrupts to pay the said loans and receive the said securities from the said banks as aforesaid, the said securities would have been levied upon by the said sheriff under and by virtue of the said execution.

And these defendants, further answering, deny that in the manner of the said transfer of the said receivables the said Bingley and Krauss acted in ignorance of their rights in the said matter, or under any misapprehension as to the force and validity of the said judgment and execution; but that they well knew that the said judgment had been duly and properly obtained and entered as a good and valid judgment against all three of the said bankrupts for a debt justly due from the said bankrupts to these defendants, and that the execution issued thereupon had been duly and properly issued and duly and properly levied upon the partnership property of the said firm.

And these defendants, further answering, say that, at the time of the making execution and delivery to them by the said bankrupts of the said bill of sale, the said sheriff was in possession, under and by virtue of the said execution, of the whole stock in trade of the said firm, at their place of business, number 349 Broadway, in the city of New York, and of all other property of the said firm, at their said place of business, not exempt by law from execution; upon which said stock in trade and other property the said sheriff had levied the said execution, in pursuance of the instructions of these defendants to levy and collect the balance remaining due upon the said judgment.

And these defendants, further answering, say that the said bill of sale was so made and delivered as aforesaid by the said bankrupts in payment and satisfaction of the balance remaining due upon the said judgment, and that thereby their said stock in trade and other property was released from the said execution, and a sale of the same by the said sheriff prevented, they having reasonable cause to believe, and believing, as these defendants are informed and believe, that if the same was so sold by the said sheriff, it would not realize its actual or market value, and that, thereby, the creditors of the said firm, should the said firm be compelled to suspend payment, would suffer very considerable loss.

And these defendants, further answering, deny that the advance of the said securities hypothecated to the said banks was made by these defendants to the said bankrupts to enable the said bankrupts to borrow the said money from the said banks, in order that the said bankrupts might apply the same, or other money, to the payment of any amount of indebtedness owing by the said bankrupts to these defendants, as such copartners as aforesaid, or otherwise.

And these defendants, further answering, say that neither at the time of the making execution and delivery of the said confession of judgment, nor at any other time, was there any understanding or agreement, either verbal or in writing, by and between these defendants and the said bankrupts, or any or either of them, express or implied, that any portion of the moneys obtained on the said securities should be, either directly or indirectly, applied to the liquidation or payment of any indebtedness then due or owing, or thereafter to become due or owing, by the said bankrupts, or any or either of them, to these defendants, or either of them; but that the said securities were so advanced as aforesaid to enable the said bankrupts to raise money to be used by

them in their business, as stated and set forth in the said confession of judgment.

And these defendants, further answering, say that they have no knowledge or information sufficient to form a belief as to whether any of the moneys obtained by the said bankrupts, by the hypothecation of the said securities as aforesaid, was applied by the said bankrupts to the payment of any indebtedness owing by them to these defendants, and they, therefore, deny that the same were so applied.

And these defendants, further answering, admit that, during
21 the months of March and April, 1869, the said bankrupts' said firm transferred to these defendants, as such copartners, other bills receivable, accounts, and assets belonging to said firm, to the amount of seventy-two thousand dollars, or thereabouts, as collateral security for other indebtedness of said bankrupts to these defendants, amounting to the principal sum of sixty-one thousand dollars; but, further answering, say that the same were so transferred to replace other securities, which had been previously transferred to these defendants, as collateral security for such indebtedness, as hereinafter more fully set forth; that, on the 6th day of August, 1868, these defendants, as such copartners, as aforesaid, acting in the legitimate pursuance of their business as bankers, and at the request of the said bankrupts, discounted the promissory notes of the said bankrupts' said firm, to the amount of $61,000, and that thereupon, and simultaneously with such discount, the said bankrupts transferred to and deposited with these defendants, as such bankers as aforesaid, bills receivable, and other securities, amounting to about the sum of $72,000, as collateral security for the payment of the said notes; that, from time to time, certain of the collaterals so deposited, as aforesaid, were, by and with the consent of these defendants, withdrawn by the said bankrupts from the possession of these defendants; but in each and every instance where the same was so withdrawn, they were immediately and simultaneously replaced by other collaterals of at least equal value on their face.

And these defendants, further answering, say that the said notes so discounted as aforesaid were not paid at their maturity but were renewed by the said bankrupts giving to these defendants in the place thereof new notes for a like amount, except that one of said notes, which was for the sum of $8,000, was paid at its maturity, to wit, on or about the twenty-second day of September, 1868, at which time the collaterals
22 given to these defendants at the time of its being so discounted as aforesaid to secure its payment, were surrendered and given up by these defendants to the said bankrupts.

And these defendants, further answering, say that the said notes so given in renewal of the notes so discounted as aforesaid on the 6th day of August, 1868, were not paid at their maturity, but were renewed by other notes given by the said bankrupts to these defendants in the place and stead thereof.

And these defendants, further answering, say, that on the 8th day of April, 1869, these defendants, acting in the legitimate pursuance of their business as bankers, and at the request of said bankrupts discounted a certain other promissory note of the said bankrupts of the amount of $8,000, and that thereupon and simultaneously therewith, the said bankrupts transferred to and deposited with these defendants certain bills receivable and other securities amounting in value on their face to about the sum of $10,000, to secure the payment of the said note.

And these defendants, further answering, say, that at no time was the title to the said securities so transferred to them as aforesaid as security

for the payment of the said notes, or of any or either of them ever parted with by these defendants, or transferred or assigned by them to the said bankrupts, or to any or either of them, or to any person or persons in their behalf, except in the instances above referred to when certain of the said collaterals were so withdrawn, and immediately and simultaneously replaced by others as aforesaid, and except in the instance when the said first above-mentioned note for $8,000 was paid at its maturity, and the collaterals given to secure its payment returned as aforesaid.

And these defendants, further answering, say that each and every of the bills receivable and other securities so transferred to these defendants in the months of March and April, 1869, were so transferred to replace other securities which had been transferred to and deposited
23 with these defendants by the said bankrupts, as collateral security for the payment of the said notes so discounted as aforesaid on the 6th day of August, 1868, or in renewal of the last-mentioned notes, or in renewal of the said notes so last given in renewal, or as security for the last-mentioned note for $8,000; and that all the bills receivable and other securities transferred to these defendants as collateral security for the payment of the said notes or of any or either of them, and so held by these defendants at any and all times since their so discounting the said notes as aforesaid, and all such as are now so held by them were transferred to them to replace other securities which had been so transferred as aforesaid as security for the payment of said notes, or of some other of them, or as security for the payment of the last-mentioned note for $8,000, and that in each and every instance of such withdrawal and replacement as aforesaid, such withdrawal and replacement were simultaneous.

And these defendants, further answering, say that none of the said notes so last given in renewal as aforesaid, were paid at their maturity, nor was the said last-mentioned note for $8,000 so paid, although all of notes have long since matured; nor have they or any or either of them been since paid, but they are all still held and owned by these defendants, or by the said Adrian Iselin.

And these defendants, further answering, say that, at the time of the filing of the petition in bankruptcy, referred to in said bill of complaint, they had not collected or realised any part of the principal sum secured by said notes, but that they have since collected out of the collaterals so transferred to and deposited with them as aforesaid, as security for the payment of the said notes, the sum of $55,877.16, and that they have applied the same towards the payment of the said notes, and that they still have remaining in their hands and uncancelled, the balance of said collaterals, amounting, at their nominal value, to the sum of $16,200.71.

And these defendants, further answering, say that they have no knowledge or information sufficient to form a belief, as to whether
24 the said Henry E. Dibblee (acting for and on behalf of his said firm) made and delivered the said confession of judgment, or made any payments to these defendants, with the view and intent to give any undue, improper, unauthorized, or unlawful preference to these defendants, as creditors of the said bankrupts, or any such preference as is contemplated, intended, or forbidden by the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," or any preference whatever, or as to whether the said bankrupts were acting in contemplation of insolvency, and they therefore deny the same; and further answering they deny that the said Henry E. Dibblee, or the said bankrupts, procured or suffered their property to be seized on execution, or made the said bill of sale, and transferred

and conveyed the said receivables, or gave the authority to these defendants to receive from the said banks the securities as hypothecated to said banks as aforesaid, or made any payments to these defendants, with the like view and intent, or in fraud of or to evade the provisions of the said act, or to prevent their property from coming to their assignee in bankruptcy, or to prevent the same from being distributed under the said act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of the provisions of the said act.

And these defendants, further answering, deny that, at the time of receiving the said confession of judgment, or at any other time previous to the entry of said judgment these defendants or either of them had reasonable cause to believe, or did believe, the said bankrupts to be insolvent, or acting in contemplation of insolvency, or at that time or at any subsequent time previous to the filing of the petition in bankruptcy a fraud upon the said act was intended by the said bankrupts; and further answering say, that at various times subsequent to the making and delivery of the said confession of judgment, the firm of Henry Barbey & Co., in the city of New York, in which firm the defendant Adrian Iselin was, at each and every of said times, a special partner, sold on credit and duly delivered to said bankrupts' said firm, with the full knowledge of the said Adrian Iselin, goods, wares, and
25 merchandise to a large amount; that the general partners in said firm of Henry Barbey & Co., inquired of the said Adrian Iselin his opinion as to the solvency of the said firm of H. E. Dibblee & Co., and the advisability of selling them goods on credit as aforesaid, and that he expressed to said firm of Henry Barbey & Co., his full belief in the solvency of said H. E. Dibblee & Co., and that, in his opinion, it would be entirely safe to so sell them goods on credit; and that said Henry Barbey & Co. are now among the largest creditors of said bankrupts' said firm.

And these defendants, further answering, say, upon information and belief, that subsequent to the making and delivery of the said confession of judgment, and previous to the filing of the said petition in bankruptcy, the said bankrupts made payments to a very large amount to creditors of their said firm other than these defendants.

And these defendants, further answering, deny that the said bill of sale, and the payment of the sum of $1,900 hereinafter mentioned, and the transfer of the said securities from the said banks, were fraudulent and void, or that these defendants had notice of any such fraud at any time, or that thereby the said bankrupts, or their said firm, being insolvent or in contemplation of insolvency, applied the partnership property of said firm to pay the individual debt of the said Dibblee; but further answering, say that the said bill of sale was made, executed, and delivered by all of the said bankrupts, and that the said sum of $1,900 was paid as hereinafter set forth, in payment of the said judgment or so much as then remained unpaid thereon.

And these defendants, further answering, deny that the securities mentioned in the said confession of judgment belong to the said assignee in bankruptcy, as alleged in said bill of complaint, subject to the amount loaned thereon by the said banks, or that the defendants, by paying the said loans and taking up the said securities stood in the
26 same condition with reference thereto that the said banks did immediately before such payment; but, further answering, say that, by paying said loans and taking up said securities, these defendants became the owners of said securities as hereinbefore stated, and

that they thereupon credited, as paid upon the said judgment, the difference between the value at which the said securities had been advanced by them to said bankrupts and the aggregate amount of the notes, for the payment of which the said securities had been hypothecated to the said banks as hereinbefore stated.

And these defendants, further answering, admit the granting and service of the injunction, and the issuing of the said warrant to the marshal of this district, mentioned in said bill of complaint, and further admit, that under the said warrant, certain moneys remitted by persons owing some of the bills receivable and accounts assigned by the said bill of sale, came into the possession of the said marshal; and these defendants further admit the granting of the order dated July 17th, 1869, referred to in said bill of complaint; and that by the report of George F. Betts, esquire, the referee, appointed in and by said order, the proceeds of certain of the said bills receivable and accounts included in the said bill of sale, were found to be included in the said bill of sale, but they deny that the same amounted to the sum of $6,510.77, as alleged in said bill of complaint; but, further answering, that the moneys and other property delivered to these defendants by the said marshal, under and by virtue of the said order and report, and amounting to the said sum of $6,510.77, embraced certain moneys and other property belonging to these defendants as such copartners, or to the said Adrian Iselin and not included in said bill of sale, as by the proceedings aforesaid remaining of record in the office of the clerk of this honorable court, and to which, for greater certainty, these defendants pray leave to refer, will more fully and at large appear.

27 And these defendants, further answering, and specifically answering the several interrogatories propounded in the said bill of complaint, say in answer to the first of said interrogatories numbered (1) in said bill of complaint, that the securities delivered by these defendants as such copartners as aforesaid, and for the value of which the said confession of judgment was given, consisted of the following, namely: Twenty fourth-mortgage bonds of the New York & Erie Railroad Company, of the denomination of $1,000 each, which said bonds were so delivered as aforesaid on the twentieth day of February, 1869, were dated respectively August 15th, 1857, bore interest, respectively, at the rate of seven per centum per annum, and were respectively payable October 1st, 1880. And that attached to each of said bonds, respectively, were coupons for the semi-annual payment of interest on said bonds respectively; which said coupons were payable, respectively, on the first day of April and October in each and every year from the date when the last semi-annual instalment of interest falling due had been paid, to and including the date when the principal sum secured by said bonds respectively was due and payable by the terms thereof, and that the cash market value of said bonds on the said twentieth day of February, 1869, was the sum of $17,500; also twenty bonds of the State of Georgia, of the denomination of $1,000 each, which said bonds were so delivered as aforesaid on the twenty-third day of February, 1869, were dated respectively July 1st, 1866, bore interest respectively at the rate of seven per centum per annum, and were severally payable on the first day of July, 1886, and that attached to each of said bonds, respectively, were coupons for the semi-annual payment of such interest on said bonds, respectively; which said coupons were payable, respectively, on the first day of January and July in each and every year from the date when the last semi-annual instalment of interest falling due had been paid to and including the date when the principal sum secured

28 by said bonds, respectively, was due and payable by the terms thereof; and that the cash market value of the said bonds on the said twenty-third day of February, 1869, was the sum of $18,600; also eighteen first-mortgage sinking-fund bonds of the Chicago & Alton Railroad Company, of the denomination of $1,000 each—which said bonds were so delivered as aforesaid on the twenty-fifth day of February, 1869, were dated, respectively, 1st November, 1862, bore interest at the rate of seven per centum per annum, and were payable November 1st, 1877; and that attached to each of said bonds, respectively, were coupons for the semi-annual payment of interest on said bonds, respectively—which said coupons were payable, respectively, on the first day of May and November in each and every year from the date when the last semi-annual instalment of interest falling due had been paid to and including the date when the principal sum secured by said bonds, respectively, was due and payable by the terms thereof; and that the cash market value of the said bonds, on the said twenty-fifth day of February, 1869, was the sum of $18,000.

And these defendants, further answering the said interrogatory, numbered 1, in said bill, say that the securities above enumerated were all the securities delivered by them, or either of them, to the said bankrupts stated in said confession of judgment.

And these defendants, further answering, and specially answering the second of said interrogatories, numbered 2, in said bill of complaint, say, upon information and belief derived from statements made to these defendants by the said bankrupts, that the fourth-mortgage bonds of the New York and Erie Railroad Company were, on the 20th day of February, 1869, hypothecated by said bankrupts to the Central National Bank, in the city of New York, as collateral security for the payment of the promissory note of said bankrupts' said firm then, on said twentieth day of February, 1869, discounted by said Central National Bank; which said note was dated February 20th, 1869, was

29 payable April 24th, 1869, and was for the sum of $15,000; that said note was not paid at its maturity, but was renewed by the said bankrupts giving to the said bank, in the place and stead thereof, on the 24th April, 1869, their two certain other promissory notes for $7,500 each, bearing date, respectively, on the 24th day of April, 1869, and payable, respectively, on the 11th day of June, 1869, and the 26th day of June, 1869. That the bonds of the State of Georgia, above mentioned, were, on the twenty-third day of February, 1869, hypothecated by the said bankrupts to the National Bank of the Republic, in the city of New York, as collateral security for the payment of the promissory note of the said bankrupts' said firm, then, on said twenty-third day of February, 1869, discounted by said National Bank of the Republic; which said note was for the sum of $16,000, was dated February 23, 1869, and was payable April 27, 1869; that said note was not paid at its maturity, but was renewed by the said bankrupts giving to said bank, in the place and stead thereof, on the 27th day of April, 1869, their certain other promissory note for $16,000, bearing date the 27th day of April, 1869, and payable on the 29th day of June, 1869; that the first-mortgage sinking-fund bonds of the Chicago and Alton Railroad Company, above mentioned, were, on the 25th day of February, 1869, hypothecated by the said bankrupts to the Merchants' Exchange National Bank, in the city of New York, as collateral security for the payment of the promissory note of said bankrupts' said firm, then, on the said twenty-fifth day of February, 1869, discounted by said Merchants' Exchange National Bank—which said note was dated Feb-

ruary 25, 1869, was payable April 29, 1869, and was for the sum of $15,000; that said note was not paid at its maturity, but was renewed by the said bankrupts on said April 29, 1869, giving to the said bank in the place and stead thereof their certain other promissory note for $15,000, bearing date the 29th day of April, 1869, and payable on the 1st day of July, 1869.

30 And these defendants, further answering, and specifically answering the third of said interrogatories, numbered 3 in said bill of complaint, say that, on the first day of May, 1869, they paid to each of said banks, respectively, the several sums then owing to said banks, respectively, by reason of their having so discounted the said notes as aforesaid, and received from said banks, respectively, all of the said notes last given to each of the said banks, respectively, as above stated, and all of the said securities so hypothecated to said banks as aforesaid; that the amount so paid to the said Central National Bank by these defendants was $14,858.54, being the aggregate amount of the said two notes so given in renewal of the said note so discounted by said bank as aforesaid, less the interest at the rate of seven per centum per annum, on one of said notes from the said first day of May, 1869, to the 11th day of June, 1869, when the first of said notes so given in renewal was payable as aforesaid, and on the other of said notes from the said first day of May, 1869, to the 26th day of June, 1869, when the other of said notes so given in renewal was payable as aforesaid; that the amount paid to the said National Bank of the Republic, by these defendants, was $15,868.89—being the amount of said note so given in renewal of the said note so discounted by the said bank as aforesaid, less the interest thereon, at the rate of five per centum per annum, from the said first day of May, 1869, to the 9th day of June, 1869, when the said note so given in renewal was payable as aforesaid; that the amount paid to the said Merchants' Exchange National Bank was $14,822.08—being the amount of the said note so given in renewal of the said note so discounted by said bank as aforesaid, less the interest thereon, at the rate of seven per centum per annum, from the said first day of May, 1869, to the first day of July, 1869, when the said note so given in renewal was payable as aforesaid.

31 And these defendants, further answering, and specifically answering the fourth of said interrogatories, numbered 4 in said bill of complaint, say that they did so receive the said securities from the said banks, respectively, by authority of the said bankrupts; that said bankrupts delivered to these defendants on the first day of May, 1869, three separate requests in writing, signed by said bankrupts, by their said firm name, and each bearing date on the first day of May, 1869, addressed to the three banks above named, respectively, requesting and authorizing said banks, respectively, to deliver to these defendants the said notes and securities so held by said banks, respectively, as aforesaid, on the payment by these defendants of the said loans so made by said banks, respectively, on the hypothecation of the said securities as aforesaid; that these defendants presented the said written requests to the said banks to which they were so, respectively, addressed, and left the said written requests with the said banks; that thereupon these defendants paid to each of said banks, respectively, the several sums as above set forth, in payment of the said loans so made by the said banks, and thereupon received from the said banks, respectively, all of the said notes and securities then so held by the said banks as aforesaid; that in each and every instance of so receiving the said notes and securities, they left the said requests in writing, with the said banks, re-

spectively; that they have not now, and never had a copy of any or either of the said written requests, and are consequently unable to set forth copies of the same herein, as demanded in and by the said fourth interrogatory in the said bill of complaint propounded.

And these defendants, further answering the said interrogatory numbered 4 in said bill of complaint, say that they never received from the said bankrupts or from any or either of them, any assignment or transfer of the said securities, or any request or authority to receive the same from the said banks, other than the requests in writing above mentioned, by virtue and authority of which they duly received
32 the said notes and securities from the said bank as aforesaid; but that there was a distinct agreement by and between these defendants and the said bankrupts, at the time when the said requests in writing were so delivered to these defendants as aforesaid; that the difference between the actual market value of the said securities, when the same were so respectively delivered by the defendants to the said bankrupts, and the aggregate amount of the said notes so discounted by said banks, should be credited on the said judgment as so much paid thereon, and the same was so credited as hereinbefore stated.

And the defendants further answering, and specially answering the fifth of said interrogatories, numbered 5 in said bill of complaint, say that at and immediately previous to the delivery of the said securities by these defendants to the said bankrupts, and for the value of which the said confession of judgment was given, they held three certain promissory notes of the said bankrupts' said firm, one of which said notes was for the sum of $18,000, was dated December 4th, 1868, and was payable April 7th, 1869; one other of said notes was for the sum of $20,000, was dated January 16, 1869, and was payable April 19th, 1869; and the other of said notes was for the sum of $15,000, was dated February 6, 1869, and was payable May 10, 1869; said several notes amounting in the aggregate to the sum of $53,000; that these several notes had been given by the said bankrupts to these defendants as such copartners as aforesaid, in renewal of three of the said notes so discounted by these defendants on the 6th day of August, or in renewal of notes given in renewal of the said three notes so discounted as aforesaid; that the notes so discounted as aforesaid, and the several notes so given in renewal, were as follows: One note for $20,000, made by the said bankrupts' said firm, so discounted as aforesaid, on the 6th
33 day of August, 1868, bearing date on the 15th day of July, 1868, and payable October 16, 1868, which said note was taken up and renewed October 16, 1868, by a new note for the same amount, made by said bankrupts' said firm, dated October 16, 1868, and payable January 17, 1869, which said last-mentioned note was taken up and renewed January 16th, 1869, by the note dated January 16, 1869, above set forth and held by these defendants as aforesaid; that the said last-mentioned note was taken up and renewed April 19th, 1869, by a new note for the same amount made by the said bankrupts' said firm, dated April 19th, 1869, and payable July 21st, 1869, which said last-mentioned note is still held by the defendant, Adrian Iselin; one other note for $15,000, made by said bankrupts' said firm so discounted as aforesaid, bearing date August 5th, 1868, and payable November 6th, 1868, which said last-mentioned note was taken up and renewed November 6th, 1868, by a new note for the same amount made by said bankrupts' said firm, dated November 6th, 1868, and payable February 7th, 1869, which said last-mentioned note was taken up and renewed February 6th, 1869, by the note above set forth dated February 6th, 1869, and held by these

defendants as aforesaid, and now held by the said Adrian Iselin; one other note for $18,000, made by said bankrupts' said firm, so discounted as aforesaid, dated August 1st, 1868, and payable December 4th, 1868, which said last-mentioned note was taken up and renewed December 4th, 1868, by the note above set forth, dated December 4th, 1868; that said last-mentioned note was taken up and renewed April 7th, 1869, by a new note for the same amount made by said bankrupts' said firm dated April-7th, 1869, and payable August 10th, 1869, and is now held by the said Adrian Iselin; and that all of said notes were drawn payable to these defendants by their said firm name.

And these defendants, further answering the said fifth interrogatory, say that at and immediately previous to the delivery of the said
34 securities by these defendants to the said bankrupts, and for the value of which the said confession of judgment was given, these defendants held, as such copartners as aforesaid, certain other promissory notes of the said bankrupts' said firm which had been purchased, by these defendants at various times in open market, said notes bearing date and being payable at various times, and amounting in the aggregate to the sum of $47,784.51, which said notes together with the dates when, and th· persons from whom the same were so purchased, respectively, as aforesaid, the amounts of the same, respectively, the rates at which they were so purchased, and the dates when the same were severally paid by the said bankrupts, are fully described and set forth in the schedule hereunto annexed, marked Schedule A, and to which said schedule these defendants pray leave to refer as part of this their answer. That said notes were all duly endorsed for collection and deposited for collection in the bank with which these defendants did business, and when taken up and paid were so taken up and paid by the said bankrupts at the said bank, which said bank duly delivered said notes to said bankrupts when the same were so severally paid; and these defendants are informed and believe, and therefore say, that all of the said notes are now in the possession of the complainant, as the assignee in bankruptcy of the said bankrupts. That at and immediately previous to the said delivery of the said securities, and for the value of which the said confession of judgment was given, the said bankrupts were indebted to these defendants, as such copartners as aforesaid, in the sum of $7,753.43, for money loaned by these defendants to the said bankrupts at various times, and for which these defendants held no security, and were also indebted to the said Adrian Iselin in the sum of $25,000, which had been loaned by said Adrian Iselin to said bankrupts' said firm, on the first day of January, 1866, to be at the risk of the business of said firm, until the first day of January, 1869;
35 and these defendants furthermore answering the said fifth interrogatory, say, that at the time of the delivery of the said securities by these defendants to the said bankrupts, and for the value of which the said confession of judgment was given, the said bankrupts became and were indebted to these defendants as such copartners as aforesaid, by reason of such delivery of said securities, in the sum of $54,100, the actual market value of the said securities when the same were so delivered as aforesaid, and for the value of which the said confession of judgment was given.

And these defendants, further answering the said interrogatory, numbered 5 in said bill of complaint, say that, at the time when the said securities were so delivered by these defendants to the said bankrupts and for the value of which the said confession of judgment was given, the said bankrupts were not indebted to these defendants, nor were these

defendants under liability for said bankrupts in any other sum or sums, or upon any other considerations than such as are above stated.

And these defendants, further answering the said interrogatory, numbered 5, say that, since the said delivery of the said securities by these defendants to the said bankrupts, and for the value of which said confession of judgment was given, the said bankrupts have made to these defendants the several payments, and upon the respective considerations hereinafter set forth; that is to say, (first,) at and between the twenty-fourth day of February, 1869, and the twenty-fifth day of March, 1869, the said bankrupts paid, at the Gallatin National Bank, in the city of New York, where the same had been lodged by these defendants for collection, the various notes of the said bankrupts' said firm, enumerated in the said Schedule A, hereunto annexed, said notes being so paid, respectively, at their maturity, at the dates set forth in said schedule, and amounting in the aggregate to the sum of $47,784.51. (Second.) On the 8th day of April, 1869, the said bankrupts paid to these defendants the sum of 7,944.88, being the said sum of $7,753.43 above mentioned, with interest from the 30th day of November, 1868, when the account between these defendants and the said bankrupts for such loans as aforesaid had been last stated. (Third.) On the 1st day of May, 1869, the said bankrupts made the following payments to these defendants on account and in payment of the said judgment, entered April 30th, 1869, against said
36 bankrupts, in favor of these defendants; that is to say, the sum of $8,100 by the difference between the actual market value of the securities hypothecated by said bankrupts to the said banks at the time when the same were so delivered by these defendants to the bankrupts as aforesaid, and the aggregate amount of the notes of the said banks discounted by said banks on such hypothecation; also the further sum of $1,900 in cash, and also delivered to these defendants the bill of sale hereinbefore referred to, dated May 1st, 1869, by virtue of which they transferred and assigned to these defendants the bills receivable and other matters and things enumerated in said bill of sale, in part payment of the amount secured by said judgment, a copy of which said bill of sale is not set forth herein on account of its very great length, but these defendants offer to produce, and will produce such original bill of sale on the trial of this action.

And these defendants, further answering the said interrogatory, numbered five, (5,) say that, on the 23d day of March, 1869, the said bankrupts paid to these defendants the sum of $5,000, and on the 29th day of March, 1869, the further sum of $5,000; and on the 2d day of April, 1869, the further sum of $4,000; and on the 6th day of April, 1869, the further sum of $3,000; and on the 30th day of April, 1869, the further sum of $3,108.52, amounting in all to the sum of $20,108.52, all of which payments were made in payment of prior loans made by these defendants to the bankrupts; that is to say, one loan of $5,000, made March 5th, 1869; one other loan of $10,000, made March 6, 1869, and one other loan, made March 8th, 1869; that the said loans were made on call; that the first two of said loans were secured by a confession of judgment, which was never entered of record, and by no other security; and that the third was not secured in any way whatever. That the said confession of judgment was executed by the said Henry E. Dibblee alone, in the name of the firm of H. E. Dibblee & Co., in form the same as the confession of judgment hereinabove referred to.

And these defendants, further answering the said fifth interrogatory, say that the said bankrupts, since the delivery of the said securities for the value of which the said confession of judgment was given, have

defendants as aforesaid, and now held by the said Adrian Iselin; one other note for $18,000, made by said bankrupts' said firm, so discounted as aforesaid, dated August 1st, 1868, and payable December 4th, 1868, which said last-mentioned note was taken up and renewed December 4th, 1868, by the note above set forth, dated December 4th, 1868; that said last-mentioned note was taken up and renewed April 7th, 1869, by a new note for the same amount made by said bankrupts' said firm dated April-7th, 1869, and payable August 10th, 1869, and is now held by the said Adrian Iselin; and that all of said notes were drawn payable to these defendants by their said firm name.

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35 and these defendants furthermore answering the said fifth interrogatory, say, that at the time of the delivery of the said securities by these defendants to the said bankrupts, and for the value of which the said confession of judgment was given, the said bankrupts became and were indebted to these defendants as such copartners as aforesaid, by reason of such delivery of said securities, in the sum of $54,100, the actual market value of the said securities when the same were so delivered as aforesaid, and for the value of which the said confession of judgment was given.

And these defendants, further answering the said interrogatory, numbered 5 in said bill of complaint, say that, at the time when the said securities were so delivered by these defendants to the said bankrupts and for the value of which the said confession of judgment was given, the said bankrupts were not indebted to these defendants, nor were these

defendants under liability for said bankrupts in any other sum or sums, or upon any other considerations than such as are above stated.

And these defendants, further answering the said interrogatory, numbered 5, say that, since the said delivery of the said securities by these defendants to the said bankrupts, and for the value of which said confession of judgment was given, the said bankrupts have made to these defendants the several payments, and upon the respective considerations hereinafter set forth; that is to say, (first,) at and between the twenty-fourth day of February, 1869, and the twenty-fifth day of March, 1869, the said bankrupts paid, at the Gallatin National Bank, in the city of New York, where the same had been lodged by these defendants for collection, the various notes of the said bankrupts' said firm, enumerated in the said Schedule A, hereunto annexed, said notes being so paid, respectively, at their maturity, at the dates set forth in said schedule, and amounting in the aggregate to the sum of $47,784.51. (Second.) On the 8th day of April, 1869, the said bankrupts paid to these defendants the sum of 7,944.88, being the said sum of $7,753.43 above mentioned, with interest from the 30th day of November, 1868, when the account between these defendants and the said bankrupts for such loans as aforesaid had been last stated. (Third.) On the 1st day of May, 1869, the said bankrupts made the following payments to these defendants on account and in payment of the said judgment, entered April 30th, 1869, against said
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And these defendants, further answering the said interrogatory, numbered five, (5,) say that, on the 23d day of March, 1869, the said bankrupts paid to these defendants the sum of $5,000, and on the 29th day of March, 1869, the further sum of $5,000; and on the 2d day of April, 1869, the further sum of $4,000; and on the 6th day of April, 1869, the further sum of $3,000; and on the 30th day of April, 1869, the further sum of $3,108.52, amounting in all to the sum of $20,108.52, all of which payments were made in payment of prior loans made by these defendants to the bankrupts; that is to say, one loan of $5,000, made March 5th, 1869; one other loan of $10,000, made March 6, 1869, and one other loan, made March 8th, 1869; that the said loans were made on call; that the first two of said loans were secured by a confession of judgment, which was never entered of record, and by no other security; and that the third was not secured in any way whatever. That the said confession of judgment was executed by the said Henry E. Dibblee alone, in the name of the firm of H. E. Dibblee & Co., in form the same as the confession of judgment hereinabove referred to.

And these defendants, further answering the said fifth interrogatory, say that the said bankrupts, since the delivery of the said securities for the value of which the said confession of judgment was given, have

not made any other or further payments to these defendants upon any of such indebtedness than such as are above stated and set forth.

All of which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and hereby
37 pray to be hence dismissed, with their reasonable costs and charges in that behalf sustained.

ADRIAN ISELIN,
HENRY W. CLARK,
Solicitor, and of counsel for the defendants, Adrian Iselin and Isaac Iselin.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss :

ADRIAN ISELIN, being duly sworn, says that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

ADRIAN ISELIN.

Sworn to before me this 30th day of November, 1869.
JOHN A. OSBORN,
U. S. Commissioner.

Schedule A, referred to in and being part of the foregoing answer.

38

When bought.	From whom.	At what rate.	When issued.	Time.	Maturity.	Amount.
1868.			1868.			
Sept. 3	R. S. Ross	15 *p. c.*	Aug. 22	6 months..	Feb. 25	$934 89
" 7	Kuhn, Loeb & Co	"	" 24	"	" 27	1,636 23
" 7	" "	"	" 25	"	" 28	1,101 75
" 7	" "	"	" 28	"	M'ch 3	1,143 20
" 7	E. Krollpfeiffer	"	" 22	"	Feb. 25	940 47
" 10	O. M. Bogart & Co	"	" 25	"	" 28	1,217 10
" 14	E. Krollpfeiffer	"	Sept. 1	"	M'ch 4	531 75
" 28	R. S. Ross	"	" 1	"	" 4	1,196 53
Oct. 9	O. M. Bogart & Co	"	Aug. 21	"	Feb. 24	1,087 00
" 9	E. Krollpfeiffer	"	" 21	"	" 24	514 40
" 5	"	"	" 28	"	M'ch 3	934 69
" 9	O. M. Bogart & Co	"	" 29	"	" 3	1,098 05
" 9	" "	"	Sept. 2	"	" 5	1,109 00
" 9	E. Krollpfeiffer	"	Aug. 25	"	Feb. 28	397 83
" 9	H. C. Bennett & Co	"	Sept. 22	"	M'ch 25	792 00
" 12	" "	"	Aug. 24	"	Feb. 27	1,235 26
" 12	E. Krollpfeiffer	"	Sept. 1	"	M'ch 4	487 00
" 12		"	" 7	"	" 10	623 07
" 15	"	"	" 12	"	" 15	1,264 20
" 20	O. M. Bogart & Co	16½ *p. c.*	Aug. 24	"	Feb. 27	662 42
" 20	" "	"	" 31	"	M'ch 3	846 56
" 20	" "	"	Sept. 4	"	" 7	1,199 26
" 20	" "	"	" 4	"	" 7	696 98
" 20	" "	"	" 11	"	" 14	238 93
" 20	" "	"	" 16	"	M'ch 9	598 07
" 22	E. Krollpfeiffer	"	Aug. 27	"	" 2	239 98
" 22	"					
Nov. 2	Graham & Aitken	"	Sept. 9	"	" 12	457 10
" 10	H. C. Bennett & Co	18 *p. c.*	" 3	"	" 6	993 01
" 10	" "	"	" 8	"	" 11	705 94
Oct. 22	E. Krollpfeiffer	16½ *p. c.*	" 10	"	" 13	225 99
Nov. 10	H. C. Bennett & Co	18 *p. c.*	" 15	"	" 18	683 90
" 11	" "	"	" 2	"	" 5	788 18
" 11	" "	"	" 4	"	" 7	631 05
" 11	" "	"	" 8	"	" 11	702 73
" 17	" "	"	" 11	"	" 14	759 71
" 17	O. M. Bogart & Co	"	" 7	"	" 10	634 91
" 17	" "	"	" 9	"	" 12	747 41
" 17	" "	"	" 9	"	" 12	443 66

When bought.	From whom.	At what rate.	When issued.	Time.	Maturity.	Amount.
" 17	" "	"	" 12	"	" 15	904 75
" 17	" "	"	" 22	"	" 25	533 11
" 24	R. S. Ross	"	" 3	"	" 6	993 75
" 24	"	"	" 10	"	" 13	984 07
" 24	"	"	" 11	"	" 14	1,532 19
" 27	E. Krollpfeiffer	"	Aug. 29	"	" 3	1,054 89
Dec. 2	H. C. Bennett & Co	"	Sept. 7	"	" 10	842 53
" 8	" "	"	" 15	"	" 18	1,235 23
" 10	Kuhn, Loeb & Co	"	Aug. 22	"	Feb. 25	1,103 07
" 14	H. C. Bennett & Co	"	Sept. 11	"	M'ch 14	1,110 75
" 14	" "	"	Aug. 29	"	" 3	234 91
" 18	O. M. Bogart & Co	"	Sept. 3	"	" 6	866 18
" 18	" "	"	" 16	"	" 19	1,236 99
" 18	" "	"	" 18	"	" 21	1,027 35
" 18	Graham & Aitken	"	" 11	"	" 14	727 80
" 18	" "	"	" 14	"	" 17	363 50
" 18	" "	"	" 9	"	" 12	259 50
" 18	" "	"	" 9	"	" 12	532 35
" 30	O. M. Bogart & Co	"	Aug. 24	"	Feb. 27	680 75
1869.						
Jan. 7	R. S. Ross	"	Aug. 24	"	Feb. 27	1,052 93
						$47,784 52

A. ISELIN.

39 U. S. district court, southern district of New York.

JAMES R. CLARK, ASSIGNEE, &c.,
against
HENRY E. DIBBLEE AND OTHERS.

SIR: Take notice that I appear for the defendants Bingley and Krauss, in this action, and have entered the appearance of said defendants accordingly.

Dated N. Y., Nov. 4, 1869.

Yours, &c.,

S. E. CHURCH,
Att'y for Def'ts., Bingley and Krauss,
205 Broadway, N. Y.

To CHA'S SMITH, Esq.,
Plaintiff's Attorney.

40 *The replication of James R. Clark, junior, complainant, to answer of Adrian Iselin and Isaac Iselin, defendants.*

In the district court of the United States for the southern district of New York.

This repliant saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain, and prove his bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things the repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

CHARLES H. SMITH,
Solicitor for Complainant.

41 U. S. district court, southern district of New York.

JAMES R. CLARK, J'R, ASSIGNEE OF HENRY E. Dibblee, David P. Bingley and John J. Krauss, bankrupts,
against
ADRIAN ISELIN, ISAAC ISELIN, HENRY E. DIBblee, David P. Bingley, and John J. Krauss.
} In equity.

Please to take notice, that I hereby appear for Adrian Iselin and Isaac Iselin in this action and demand that all papers herein be served on me at my office, No. 100 Broadway, New York City.

Dated New York, October 12, 1869.

HENRY W. CLARK,
Attorney and Solicitor for
Adrian Iselin and Isaac Iselin.

42 United States district court for the southern district of New York.

JAMES R. CLARK, J'R, ASSIGNEE, &c.,
against
HENRY E. DIBBLEE AND OTHERS.
} In equity.

SIR: Take notice that my appearance as attorney for the defendant, Henry E. Dibblee, has been duly entered with the clerk of this court.

New York, Nov. 9th, 1869.

Yours, &c.,

R. W. TOWNSEND,
Att'y Def't, Henry E. Dibblee,
247 Broadway New York City.

To CHARLES H. SMITH, Esq.,
Solicitor, &c., 243 Broadway, N. Y.

43 At a term of the district court of the United States for the southern district of New York, held at the court-rooms in the city of New York, March 5, 1870.

Present, Hon. Samuel Blatchford, judge.

JAMES R. CLARK, JR., ASSIGNEE, &C.,
against
ADRIAN ISELIN, ISAAC ISELIN, HENRY DIBblee, David P. Bingley, and John J. Krauss.

The defendants Krauss and Bingley, having on the 5th day of November, 1869, and the defendant Dibblee, having on the 9th day of November, 1869, entered their appearance in this action, and their time to answer having expired, and no answer having been put in by them:

On motion of Charles H. Smith, solicitor for the complainant, it is ordered that the bill of complaint herein be, and the same is hereby, taken as confessed against the said Krauss, Bingley & Dibblee.

Witness Hon. Samuel Blatchford, judge of said court, and the seal thereof, at the city of New York, in said district, this 5th day of March, 1870.

[L. S.] (Signed) GEO. F. BETTS, *Clerk.*

A true copy from the original on file.

[L. S.] GEO. F. BETTS, *Clerk.*

44 At a term of the district court of the United States, for the southern district of New York, held at the court-rooms in the city of New York.

Present, Hon. Samuel Blatchford, judge.

JAMES R. CLARK, J'R, ASSIGNEE,
against
ADRIAN ISELIN, ISAAC ISELIN, HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS.

On the bill of complaint herein, and answer of the defendants Iselin, and order entered March 5, 1870, whereby said bill of complaint is taken as confessed against the defendants Dibblee, Bingley, and Krauss, and on reading and filing the consent of Henry W. Clark, solicitor for the defendants, and on motion of Charles H. Smith, solicitor for the complainant.

It is ordered that James B. Metcalf, of New York City, counsellor at law, be, and he hereby is, appointed examiner, to take the testimony in the above-entitled action and report the same to the court.

Witness Hon. Samuel Blatchford, judge of said court, and the seal thereof, at the city of New York, in said district, this 19th day of March, 1870.

A true copy of the original on file.

[L. S.] GEO. F. BETTS, *Clerk.*

45 United States district court, southern district of New York.

JAMES R. CLARK, J'R, ASSIGNEE,
versus
ADRIAN ISELIN, ISAAC ISELIN, HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS. } In equity.

To the district court of the United States, for the southern district of New York.

I, James Betts Metcalf, United States commissioner, heretofore appointed examiner to take the testimony herein, as appears by the foregoing certified copy of the order making such appointment, do respectfully report to this honorable court that, after eight adjournments, I am, on this twenty-fourth day of June, 1870, attended by Charles H. Smith, esq., counsel for the complainant, and by Henry W. Clark, esq., counsel for the defendants Adrian Iselin and Isaac Iselin, and by the parties; whereupon the counsel for the complainant, to maintain the issues upon his part, calls as a witness—

ADDISON B. GATES, who being duly sworn, deposes and says, as follows:

Q. 1. Were you ever bookkeeper for H. E. Dibblee & Co.; and if so, for how long a time?

46 A. I was; from January 1st, 1866, up to the month of May, 1869.

(Witness is shown a letter from A. Iselin & Co., to H. E. Dibblee & Co., dated December 4, 1868, the genuineness of which is admitted by the counsel for the defendants Iselin. It is offered in evidence, is marked "Exhibit No. 1, J. B. M., 24–6, '70," and is as follows:

"NEW YORK, *December* 4, 1868.

"Messrs. H. E. DIBBLEE & Co.,
Present:

"$24,051.60. GENTLEMEN: Enclosed please find 48 notes, held as collateral for your note of $20,000, due January 17, 1869.

"$16,902.11. 34 notes, held as collateral for your note of $15,000, due February 7, 1869.

"$22,286.90. 44 notes held as collateral for your note of $18,000, due April 7, 1869.

"All of which we would request you to collect for our account.

"Yours, truly,

"A. ISELIN & CO.,
"Per A. ISELIN. J'R, *Att'y.*")

Q. 2. Do you recognize that letter as having been received by Dibblee & Co. from Iselin & Co.?

A. I cannot say whether I ever saw it before or not.

Q. 3. Do you remember having seen a letter similar to that?

A. I have seen a similar letter, but I cannot now say anything positive as to its date.

Q. 4. May this be the letter to which you refer?

(Objected to.)

A. It may.

Q. 5. Can you state whether it is or not; and if not, why can you not?

47 A. I cannot state whether it is or not, inasmuch as I cannot remember as to the date and amounts mentioned therein.

Q. In what respects was the letter referred to in answer to question No. 3 similar to this one, marked Exhibit No. 1?

A. It was similar in that it was of the same purport as other letters received from A. Iselin & Co., either before or since.

Q. 7. Do you remember whether, in the early part of December, 1868, H. E. Dibblee & Co. received from A. Iselin & Co. a letter containing a number of notes, which Iselin & Co. had held as collateral from Dibblee & Co., with a request by Iselin & Co. that Dibblee & Co. would collect the same for their (Iselin & Co.'s) account?

(Objected to so far as it seeks to inquire into the contents of any letter not produced, and also objected to generally.)

A. I cannot state positively, but I think they did.

Q. To the best of your remembrance and belief, state whether the letter, Exhibit No. 1, was the letter you refer to in your last answer?

A. I should say that it was, although I cannot remember as to dates and amounts; it refers to those matters.

Q. 9. Can you state whether the number of notes returned, and the aggregate amounts, were about the sums and figures specified in this letter, Exhibit No. 1?

(Objected to.)

A. I think they were.

Q. 10. Do you know whether Dibblee & Co. did receive back for collection for the account of Iselin & Co., in the early part of December, 1868, collaterals which had been pledged by Dibblee & Co. with Iselin & Co. as collaterals for the payment of an indebtedness of Dibblee & Co. to Iselin & Co.?

48 A. In the early part of December, 1868, Dibblee & Co. received back from Iselin & Co. certain notes which I supposed had been pledged as collaterals.

Q. 11. Why do you suppose that they had been so pledged as collaterals?

(Objected to.)

A. I was so given to understand by Mr. Dibblee, although he didn't say so in so many words. He told me to get out certain notes, and make a list of them for A. Iselin & Co. I did so, and those notes were marked off to them on our bill-book.

Q. 12. Was there a book of Dibblee & Co.'s upon which you entered the notes which you say were returned in the early part of December, 1868?

A. There was no such book.

Q. 13. Do you remember whether on or about the fifth day of April, 1869, and on or about the eighth day of April, 1869, Dibblee & Co. sent Iselin & Co. a large amount of notes and accounts as collateral security?

A. In the early part of April, 1869, I delivered to Mr. Dibblee certain notes and accounts, he saying that he intended to take them to Mr. Iselin.

Q. 14. Were those entered on any book?

A. They were.

Q. 15. Can you state about the amount of those notes and accounts?

A. I cannot, except approximately; I think it was about seventy thousand dollars.

Q. 16. What was the description of those notes and accounts?

A. They were notes and accounts for goods sold by Dibblee & Co. in the course of their business.

Q. 17. Prior to this time, when the collaterals were delivered in April, 1869, who collected or received payment for the collaterals which
49 had before then been delivered, or entered on the books of Dibblee & Co. as delivered to Iselin & Co.?

A. H. E. Dibblee & Co.

Q. 18. What was done with the money so collected by H. E. Dibblee & Co?

(Objected to.)

A. It was entered regularly in their cash-book and used in their business. No distinction was made between that money and any other money of Dibblee & Co., save that a record was kept in another book of the amounts so received; that other book to which I refer was a book in which collaterals were entered and marked off when paid.

Q. 19. Who had the actual custody of the collaterals which had been delivered by Dibblee & Co. to Iselin & Co., or which had been entered on the books of Dibblee & Co. as so delivered, between December, 1868, when the collaterals were returned, and April, 1869, when the new collaterals were delivered, or entered as delivered?

A. H. E. Dibblee & Co.

The further examination of this witness is here, by consent, adjourned to June 28th, 1870, at 3 p. m.

NEW YORK, *June 28th*, 1870.

The parties appear, and the examination is further adjourned to July 7, 1870, at 3 p. m.

NEW YORK, *July 7*, 1870.

The parties appear, and the examination is further adjourned to July 21, 1870, at 2 p. m.

50 NEW YORK, *July* 21, 1870.

The parties appear, and the examination is further adjourned to August 4, 1870, at 2 p. m.

NEW YORK, *August* 14, 1870.

The parties appear, and the examination is further adjourned to August 18, 1870, at 1 p. m.

NEW YORK, *August* 18, 1870.

The parties appear, and the examination is further adjourned to September 6, 1870, at 1 p. m.

NEW YORK, *September* 6, 1870.

The parties appear, and the examination is further adjourned to September 20th, 1870, at 1 p. m.

NEW YORK, *September* 20*th*, 1870.

The parties appear, and the examination is further adjourned to September 29th, 1870, at 1 p. m.

NEW YORK, *September* 29*th*, 1870.

The parties appear, and the examination is further adjourned to October 5th, 1870, at 1 p. m.

51 NEW YORK, *October* 5*th*, 1870.

The parties appear, and the examination is further adjourned to October 7, 1870, at 2 p. m.

NEW YORK, *October* 7*th*, 1870.

The parties appear, and the examination is further adjourned to October 14, 1870, at 3 p. m.

NEW YORK, *October* 14*th*, 1870.

The parties appear, and the examination is further adjourned to October 20th, 1870, at 1 p. m.

NEW YORK, *October* 20*th*, 1870.

The parties appear, and the examination is proceeded with:

The further examination of Addison B. Gates, the witness now on the stand, is, by consent of counsel, suspended; and, he having left the city to reside permanently elsewhere, the signature by him of the foregoing testimony, given by him on the twenty-fourth day of June, 1870, is, also by consent, dispensed with.

The counsel for the complainant puts in evidence a statement, furnished by the defendants Iselin as a correct abstract from their books and of the whole thereof, relating to the dealings between A. Iselin & Co. and H. E. Dibblee & Co., between the dates therein specified, which said statement is admitted by the counsel for the complainant and for the defendants Iselin, to be such correct abstract, is marked "Exhibit No. 2, J. B. M., 20, 10, '70," and is as follows:

52

1868. August 6 — We discounted notes H. E. Dibblee & Co:

$8,000,	45 days,	date from	5th August,	falling due	22d September,	1868.	Paid at maturity.
20,000,	90 days,	date "	15th July,	" "	16th October,	"	Renewed to the 17th January, 1869; to 19th April, 1869; to 21st July, 1869.
15,000,	90 days,	date "	5th August,	" "	6th November,	"	" " " 7th February, " to 10th May, "
18,000,	4 months,	date "	1st August,	" "	4th December,	"	" " " 7th April, " to 10th August, "

" August 6 — $61,000 together. To secure the payment of the above notes, Messrs. Dibblee & Co. handed us various notes as collateral security, viz:

On the note of $8,000, collaterals for	$8,196 48	In 8 notes; for further particulars see below, litera A.
" " 20,000, "	23,994 05	In 52 " " " " " B.
" " 15,000, "	17,952 17	In 35 " " " " " C.
" " 18,000, "	22,027 72	In 52 " " " " " D.
Security amounting to	$72,170 42	In 147 notes, which we handed back to Messrs. Dibblee & Co. by our letter of the th August, 1868, to be collected for our account.

A. The note of $8,000, being paid at maturity, we surrendered the list of sureties to Messrs. Dibblee & Co., and cancelled the pledge thereof...

B. For the $20,000 note, security for	$23,994 05	
1868. August 31 — Dibblee & Co. reported collected, 1 note of	500 98	Handed back to Messrs. Dibbled & Co. for collection on the 7th Aug., as above.
Which they replaced by one note of	$23,493 07 500 11	Handed back to Dibblee Sep. 17, 1868, for collection.
" Oct. 6 — Dibblee & Co. reported collected, 6 notes	$24,004 18 4,232 87	
And replaced them by 4 notes	19,771 34 4,274 74	
" Nov. 4 — Dibblee & Co. reported collected, 16 notes	24,046 05 6,160 04	
And replaced same by 11 notes	$17,886 01 6,358 41	
" Nov. 12 — Withdrawn by Dibblee, 1 note	$24,244 42 750 83	
And replaced by 1 note	$23,493 59 735 76	
" Nov. 15 — Dibblee & Co. withdrew 1 note	$24,229 35 1,154 65	
And replaced it by 1 note	$23,074 70 1,172 88	
	$24,247 58	

Statement of A. Iselin & Co.—Continued.

" Dec.	4	Dibblee & Co. reported as collected, the balance of collaterals, 6th Aug., 29 notes	$24,247 58 13,100 16	
		And replaced by 31 notes	$11,147 42 12,904 18	
			$24,051 60	Handed back to Dibblee & Co. for collection by our letter of Dec. 4.
" August	6	C. Collaterals received for the $15,000 note	$17,952 17	Handed back to Dibblee & Co. for collection by our letter of Aug. , 1868.
" "	31	Dibblee & Co. reported collected, 2 notes	608 00	
		And replaced same by 2 notes	$17,344 17 618 51	Handed back to Dibblee by our letter of Sept. 17, 1868, to be collected for our acc't.
" Oct.	6	Dibblee & Co. reported collected 8 notes	$17,962 68 3,272 42	
		And replaced same by 3 notes	$14,690 26 3,220 49	
" Nov.	4	Dibblee & Co. reported collected 7 notes	$17,910 66 2,986 06	
		And replaced them by 5 notes	$14,924 60 3,009 92	
" Dec.	4	Reported collected balance of original collaterals of August 6th	$17,934 52 11,085 69	
		And replaced by 25 new notes	$6,848 83 10,053 28	
			$16,902 11	Handed back to Dibblee to be collected for our acc't by our letter of Dec. 4, 1868.
" Aug.	6	D. Collaterals received for the $18,000 notes	$22,037 72	Handed back to Dibblee & Co. Aug. 7th, 1868, for collection.
" "	31	Dibblee & Co. reported collected 4 notes	3,249 82	
		And replaced same by 5 notes	$18,788 44 3,322 90	Handed back to Dibblee & Co. Sept. 17, for collection
" Oct.	6	Dibblee & Co. reported collected	$22,111 34 10,285 28	
		And replaced same by 14 notes	$11,826 06 10,276 45	
" Nov.	4	Collected and withdrawn by Dibblee & Co	$22,102 51 5,953 20	

		And replaced same by 14 notes	$16,149 31 6,007 38	
"	Nov. 19	Withdrawn, 2 notes	$22,156 69 1,064 99	
		Replaced same by 2 notes	$24,091 70 1,028 96	
"	Dec. 4	Collected by Dibblee, the balance of the original collaterals of August 6th	$22,120 66 5,872 86	
		And replaced same by 16 new notes	$16,247 80 6,039 10	
			$22,286 90	Handed back to Dibblee & Co. to be collected for our account. See our letter of Dec. 4, 1868.
		From the 4th December we kept but one record for the collaterals of all the 3 notes together { B.. C.. D..	$24,051 60 16,902 11 22,286 90	
		Dibblee reported collected, from 4th December, 1868, to 15th January, 1869	$63,240 61 16,861 45	
		And replaced same by 47 notes	$46,379 16 16,939 73	Handed back for collection to Dibblee & Co. by our letters of Jan. 18, 1869, $2,474 75 Jan. 19, " 14,464 98 $16,939 73
			$63,318 89	
		All these notes were reported collected up to April 5th, 1869, and replaced by new notes and open accounts amounting to	$62,027 34	As per original list of Dibblee & Co.

The said counsel for the complainant further puts in evidence a statement prepared by Charles Wells, a professional accountant, on behalf of the complainant, after examining the books of the bankrupts and of the said defendants Iselin, which, it is stipulated between the counsel for the said complainant and for the said defendants Iselin, shall have the same effect as if the matters therein stated had been duly testified to by the said Wells, as a witness on behalf of the complainant. The said counsel also stipulate to admit the said statement as competent evidence against the defendants Iselin, waiving the necessity of evidence being given as to the truth of the entries in said books; both counsel, however, reserving the right to introduce evidence contradicting or explaining such portions thereof as they may deem advisable, which said last-described statement is marked "Exhibit No. 3, J. B. M., 20, 10, '70," and is as follows:

Statement prepared by Charles Wells.

On the 6th of August, 1868, the firm of H. E. Dibblee & Co. was indebted to the firm of A. Iselin & Co. in the sum of about $61,000, say sixty-one thousand dollars, unsecured, as appears by Dibblee & Co.'s books, which indebtedness had been accumulating for some months previously. On that day A. Iselin & Co. discounted the notes of H. E. Dibblee & Co. for them, as follows:

No. 755,	due	October	16,	1868,	for	$20,000
" 756,	"	December	4,	"	"	18,000
" 757,	"	November	6,	"	"	15,000
" 758,	"	September	22,	"	"	8,000
						$61,000

Three of these notes, viz, No. 755, 756, and 757, amounting to the sum of $53,000, say fifty-three thousand dollars, were never paid prior
53 to the failure of H. E. Dibblee & Co., but were renewed from time to time as hereinafter mentioned.

On the 7th of August, 1868, the day after the above notes were discounted, E. H. Dibblee & Co. paid to A. Iselin & Co. the sum of sixty thousand dollars on account of the prior indebtedness mentioned above.

Of the $63,983.94 of bills receivable, said by A. Iselin & Co, in the statement marked "Exhibit No. 2," to have been pledged by H. E. Dibblee & Co. to them as collateral for the payment of the above-mentioned notes all were long past due; $29,647.10 of that amount being now in the hands of the assignee in bankruptcy, and almost worthless. All these collaterals that were paid, were paid to H. E. Dibblee & Co.. and credited to the parties from whom they were due on the books of H. E. Dibblee & Co., and the money used by them in their business, and no record can be found upon the books of H. E. Dibblee & Co. that they had been delivered to A. Iselin & Co.

In no instance did A. Iselin & Co. collect or receive one dollar of these, nor any other collaterals, said to have been delivered to them prior to the 5th of April, 1869, as will be seen by the following statements.

It appears by the books of H. E. Dibblee & Co. that the note No. 814, drawn by Richards, Anderson & Co., due January 18, 1868, for $2,978.30 which is one of the 52 notes stated in said exhibit to have been given to A. Iselin & Co. as collateral for note No. 756, discounted August 6th,

1868, was compromised and settled by H. E. Dibblee & Co. on the 6th of April, 1868, for $350 in cash and $1,500 in country notes.

The books of H. E. Dibblee & Co. show that their note No. 755, given to A. Iselin & Co., due October 16, 1868, for $20,000, was renewed at maturity for note No. 896, due January 16, 1869, which note was renewed at maturity for the note No. 1010, due April 19, 1869, and this note was renewed at maturity for note No. 1133, dated April 19, 1869, at ninety days, due July 18, 21, 1869.

The statement of A. Iselin & Co., marked "Exhibit No. 2," and their books, show that on the 6th of August, 1868, H. E. Dibblee & Co. gave them as collateral for note No. 755, mentioned above, 52 notes, viz:

Nos. 754, 806, 805, 1012, 843, 830, 845, 863, 847, 1069, 850, 865, 905, 867, 1066, 875, 954, 870, 872, 993, 878, 909, 880, 1036, 882, 1097, 1108, 987, 1157, 997, 802, 898, 911, 1089, 794, 857, 920, 923, 1115, 998, 1048, 933, 960, 1016, 936, 963, 989, 969, 967, 1001, 804, and 951, amounting to $23,994 05

H. E. Dibblee & Co.'s books show that of the above $23,994.05—

$1,809 05 was due in December, 1867.
22,185 00 " " January, 1868.

$23,994 05

54 The statement and books of A. Iselin & Co. show that the following exchanges of collaterals were made:

AUGUST 31ST, 1868.—By Iselin & Co.'s said statement and books, note No. 805 was at this date reported by Dibblee & Co. as collected 500 98

$23,493 07

Dibble & Co.'s books show that they took a new note for the above, August 18, 1868.

By Iselin & Co.'s said statement and books the note No. 805 was replaced by Dibblee & Co. with note No. 1,229, due in February, 1869, for 511 11

$24,004 18

OCTOBER 6TH, 1868.—By Iselin & Co.'s said statement and books, six notes, viz., No. 754, 830, 954, 882, 967 and 993 were at this date reported by Dibblee & Co. as collected, amounting to 4,232 87

$19,771 31

Dibblee & Co.'s books show that of the above $4,232.87—

No. 882, $759 32 was paid September 3, 1868.
993, 164 07 " " " 19, "
967, 1,094 80 a new note was taken by D. & Co., Sept. 28, 1868.
954, 903 83 " " " " " " " " 25, 1868.
830, 544 24 $136 16 was paid to assignee, balance unpaid.
754, 766 61 still unpaid.

$4,232 87

By Iselin & Co.'s said statement and books, the above $4,232 87 was replaced by Dibblee & Co. by 4 notes, viz: Nos. 1273, 1261, 1256, and 1278, due in January, 1869, and amounting to 4,274 74

$24,046 05

NOVEMBER 4, 1868.—By Iselin & Co.'s said statement and books, 16 notes, Nos. 866, 843, 850, 872, 1108, 987, 794, 1048, 960, 963, 989, 1069, 997, 998, 1001, and 951, were at this date reported by Dibblee & Co. as collected, amounting to 6,160 04

$17,886 01

Dibblee & Co.'s books show that of the above $6,160 04—

55 $372 83 was paid October 10, 1868.
249 88 " " " 12, "
254 16 " " December 21, "
369 95 " " January 11, 1869.
327 26 " compromised by D. & Co., October 26, 1868, @ 25%.
516 61 " paid to assignee in bankruptcy.
4,069 95 is still unpaid.

$6,160 04

By Iselin & Co.'s said statements and books the above $6,160.04 was replaced by Dibblee & Co. by 11 notes—Nos. 1280, 1349, 1264, 1495, 1375, 1369, 1370, 1386, 1254, 1388, and 1389, due in January and February, 1869, amounting to 6,358 41

$24,244 42

NOVEMBER 12, 1868.—By Iselin & Co.'s said statement and books, note No. 1369 was this day withdrawn by Dibblee & Co., amounting to 750 83

$23,493 59

Dibblee & Co.'s books show that of the above $750 83—
$489 56 was paid October 27, 1868.
261 27 " " November 11, "

$750 83

By Iselin & Co.'s said statement and books the above $750 83 was replaced by Dibblee & Co. by note No. 1438, due January 20, 1869, amounting to 735 76

$24,229 35

NOVEMBER 15, 1868.—By Iselin & Co.'s said statement and books, note No. 1278 was withdrawn by Dibblee & Co. on this day, amounting to 1,154 65

$23,074 70

Dibblee & Co.'s books show that the above note, No. 1278, was paid November 13, 1868.

By Iselin & Co.'s said statement and books the above $1,154 65 was replaced by Dibblee & Co. by notes Nos. 1471 and 1367, due in January, 1869, and amounting to 1,172 88

$24,247 58

DECEMBER 4, 1868.—By Iselin & Co.'s said statement and books, 29 notes, viz: Nos. 1012, 845, 863, 847, 865, 905, 687, 1166, 875, 870, 878, 909, 880, 1036, 1097, 1157, 802, 898, 911, 1089, 857, 920, 923, 1115, 933, 1016, 936, 969, and 804, were at this date reported as collected by Dibblee & Co., amounting to 13,100 16

$11,147 42

56 Dibblee & Co.'s books show that of the above $13,100 16—

$150 63	was paid November 23, 1868.
2,369 41	was compromised by assignee at 50%.
7,730 29	is still unpaid.
2,849 83	was paid to the assignee.
$13,100 16	

By Iselin & Co.'s said statement and books, the above $13,100 16 was replaced by Dibblee & Co. by 31 notes, the avails of recent sales, viz: Nos. 1467, 1391, 2463, 1427, 1428, 1394, 1404, 1479, 1410, 1411, 1413, 1414, 1430, 1464, 1415, 1483, 1484, 1431, 1432, 1465, 1443, 1445, 1452, 1446, 1449, 1486, 1466, 1335, 1468, 1511, and 1489, amounting to 12,904 18

$24,051 60

The books of H. E. Dibblee & Co. show that their note No. 757, given to A. Iselin & Co., due November 6th, 1868, for $15,000, was renewed the day it was due, for No. 948, due February 7, 1869, and the note was renewed at maturity for note No. 1015, dated February 6, 1869, at 90 days, due May 10, 1870.

The statement of A. Iselin & Co., marked "Exhibit No. 2," and their books, show that on the 6th of August, 1868, H. E. Dibblee & Co. gave them as collateral for note No. 757, mentioned above, 35 notes, viz: Nos. 812, 748, 903, 803, 900, 1008, 93, 94, 1083, 887, 1020, 1018, 1024, 1025, 1028, 1027, 1030, 1033, 1040, 1058, 758, 1059, 1132, 1070, 1121, 744, 1096, 1099, 778, 889, 1037, 518, 547, 735, and 772, amounting to $17,952 17

The books of H. E. Dibblee & Co. show that of the above $17,952 17—

$1,516 64	were due in August, 1867.
4,569 42	" " December, "
11,866 11	" " February, 1868.
$17,952 17	

The said statement and books of A. Iselin & Co. show that the following exchanges of collaterals were made:

AUGUST 31ST, 1868.—By Iselin & Co.'s said statement and books, 2 notes, Nos. 748 and 1121 were at this date reported by Dibblee & Co. as collected, amounting to.... 608 00

$17,344 17

Dibblee & Co.'s books show that of the above $608—
$360 54 was paid February 24, 1868,
247 46 " to assignee.
$608 00

57 By Iselin & Co.'s said statement and books, the notes Nos. 748 and 1121 were replaced by Dibblee & Co., with note No. 1222, amounting to. 618 51

$17,962 68

OCTOBER 6TH, 1868.—By Iselin & Co.'s said statement and books, 8 notes, viz: Nos. 93, 94, 735, 903, 887, 1024 1099 and 778, were at this date reported by Dibblee & Co. as collected, amounting to..... 3,272 42

$14,600 26

The books of H. E. Dibblee & Co., show that of the above $3,272.42—
$200 00 was paid September 1, 1868.
191 85 " " 3, "
79 42 " " 24, "
485 35 " " 29, "
108 58 " October 5, "
835 40 was compromised by assignee in bankruptcy, at 50%.
1,371 82 is still unpaid.
$3,272 42

By Iselin & Co.'s said statement and books, the above $3,272.42 was replaced by Dibblee & Co., by 3 notes, viz: Nos. 1248, 1274 and 1281, amounting to 3,220 40

$17,910 66

NOVEMBER 4TH, 1868.—By Iselin & Co.'s said statement and books, 7 notes, 1030, 812, 1018, 900, 1058, 1096 and 547, were at this date reported by Dibblee & Co., as collected, amounting to..... 2,986 06

$14,924 60

Dibblee & Co.'s books show that of the above $2,986.06—
$496 91 was paid April 8, 1868.
200 00 " October 19, 1868.
200 00 " November 5, 1868.
339 29 a new note was taken by D. & Co., October 27, 1868.
1,779 86 is still unpaid.
$2,986 06

By Iselin & Co.'s said statement and books, the above $2,986.06 was replaced by Dibblee & Co., by 5 notes, viz, Nos. 1340, 4470, 1253, 1305 and 1300, amounting to 3,009 92

$17,934 52

58 DECEMBER 4, 1868.—By Iselin & Co.'s said statement and books, 21 notes, Nos. 803, 812, 748, 1121, 1008, 1083, 1025, 1028, 1027, 1030, 1033, 1040, 758, 1059, 1132, 1070, 744, 889, 1057, 518 and 772, were at this day reported by Dibblee & Co., as collected, they being what remained of the original collaterals of August 6, 1868, and amounting to $11,085 69

$6,848 83

Dibblee & Co.'s books show that of the above $11,085,69—

$166 91	was paid	October	15,	1868.
312 03	"	November	23,	"
50 00	"	December	8,	"
383 49	"	"	12,	"
1,477 77	new notes were taken by D. & Co.			
1,845 19	was paid to assignee in bankruptcy.			
1,166 05	was comprised by assignee in bankruptcy.			
5,684 25	is still unpaid.			
$11,085 69				

By Iselin & Co.'s said statement and books the above $11,085.69 was replaced by Dibblee & Co., by 25 notes, the avails of recent sales, viz: Nos. 1323. 1297, 1498, 1343, 1472, 1326, 1342, 1357, 1513, 1512, 1457, 1359, 1378, 1399, 1536, 1306, 1315, 1314, 1316, 1363, 1317, 1437, 1321, 1341 and 1380, amounting to $10,053 28

$16,902 11

The books of H. E. Dibblee & Co., show that their note No. 756, given to A. Iselin & Co., due December 4, 1868, for $18,000, was renewed the day it was due, for note No. 989, due April 7, 1869; and this note was renewed at *at* maturity for note No. 1072, dated April 7, 1869, at 4 months, due August 7—10, 1869.

The statement of A. Iselin & Co., marked "Exhibit No. 2," and their books show that on the 6th of August, 1868, H. E. Dibblee & Co., gave them as collateral for note No. 756, mentioned above, 52 notes, viz: 788, 1215, 459, 349, 470, 710, 1220, 1178, 1203, 1214, 1218, 1219, 1212, 1201, 1216, 1207, 1202, 1174, 1182, 1217, 1209, 1196, 1210, 1197, 1213, 687, 664, 612, 604, 582, 510, 1142, 1044, 901, 1043, 815, 1041, 406, 576, 814, 877, 868, 1150, 917, 262, 342, 462, 291, 368, 350, 353 and 187, amounting to $22,037 72

The books of Dibblee & Co. show that of the above $22,037.72—

59

$4,538 24	was due	January,	1867.	
421 22	"	"	February,	"
1,255 23	"	"	March,	"

974	60	"	"	July,	"
985	14	"	"	August,	"
126	84	"	"	September,	"
441	70	"	"	December,	"
4,292	10	"	"	January,	1868.
3,562	69	"	"	March,	"
296	76	"	"	May,	"
3,452	45	"	"	August,	"
713	73	"	"	September,	"
734	15	"	"	November,	"
239	87	"	"	January,	1869.
$22,037	72				

The said statement and books of A. Iselin & Co. show that the following exchanges of collaterals were made:

AUGUST 31, 1868.—By Iselin & Co.'s said statement and books, 4 notes, viz: Nos. 1216, 1197, 1213 and 815 were at this date reported by Dibblee & Co., as collected, amounting to $3,249 28

$18,778 44

The books of Dibblee & Co. show that of the above $3,249.28—

$1,000	00	was paid	April	29,	1868.
170	44	"	" August	8,	"
597	29	"	" "	13,	"
698	47	"	" "	18,	"
783	08	new notes were taken by D. & Co.			
$3,249	28				

By Iselin & Co.'s said statement and books, the above $3,249.28 was replaced by Dibblee & Co. by 5 notes, viz: 1230, 1232, 1235, 1238 and 2241, amounting to 3,322 90

$22,111 34

OCTOBER 6, 1868.—By Iselin & Co.'s said statement and books 24 notes, Nos. 368, 262, 868, 814, 476, 406, 1150, 582, 470, 349, 877, 1142, 1210, 1196, 1217, 1274, 1207, 1201, 1218, 1214, 1203, 1178, 1220 and 788, were at this date reported by Dibblee & Co. as collected, amounting to 10,285 28

$11,826 06

60 Dibblee & Co.'s books show, that of the above $10,285.28—

$441	70	was paid	December,		1867.
373	42	"	" February,		1868.
400		"	" April,		"
459	15	"	" August,		"
1,347	12	"	" September,		"
237	34	"	" to the assignee in bankruptcy.		
577	76	"	compromised by the assignee in bankruptcy		
6,448	79	is still unpaid.			
$10,285	28				

By Iselin & Co.'s said statement and books, the above $10,285.28 was replaced by Dibblee & Co. by 14 notes, Nos. 1252, 1262, 1265, 1266, 1271, 1272, 1279, 1284, 1285, 1291, 1382, 1383 and 1385, amounting to 10,276 45

$22,102 51

NOVEMBER 4, 1868.—By Iselin & Co.'s said statement and books, 17 notes, Nos. 621, 1209, 1212, 459, 442, 1182, 917, 1215, 350, 353, 1219, 1043, 324, 1044, 1241, 901, and 710, were at this date withdrawn, or reported by Dibblee & Co., as collected, amounting to..... 5,953 20

$16,149 31

Dibblee & Co.'s books show, that of the above $5,953.20—

$860 91	was paid	October, 1868.
886 45	"	" November, "
164 38	"	" January, 1869.
206 67	"	" February, "
997 16	"	" to the assignee in bankruptcy.
1,050 81	"	compromised by the assignee in bankruptcy.
1,787 82	is still unpaid.	
$5,953 20		

By Iselin & Co.'s said statement and books, the above $5,953.20 was replaced by Dibblee & Co. by 14 notes, Nos. 1449, 1298, 1295, 1398, 1293, 1330, 1347, 1435, 1434, 1282, 1304, 1328, 1458 and 1324, amounting to. 6,007 38

$22,156 69

NOVEMBER 19, 1868.—By Iselin & Co.'s said statement and books, 2 notes, Nos. 1294 and 1434, were at date withdrawn by Dibblee & Co., amounting to 1,064 99

$21,091 70

Dibblee & Co.'s books show, that of the above $1,064.99—

$716 38	was paid	November 18, 1868.
348 61	"	compr'ised by D. & Co., Dec. 31, 1868.
$1,064 96		

61 By Iselin & Co.'s said statement and books the above $1,064 99 was replaced by Dibblee & Co. by 2 notes, Nos. 1348 and 1319, amounting to. 1,028 96

$22,120 66

DECEMBER 4, 1868.—By Iselin & Co.'s said statement and books 13 notes, Nos. 1202, 687, 664, 604, 519, 621, 1041, 291, 187, 1230, 1232, 1235, and 1238 were at this date reported by Dibblee & Co. as collected, they being what remained of the original collaterals of August 6, 1868, amounting to..... 5,872 86

$1,247 80

Dibblee & Co.'s books show, that of the above $5,872 86—
$206 90 was paid in November, 1868.

2,988	29	"	"	" January, 1869.
365	83	"	"	" March "
1,210	95	"	"	to the assignee in bankruptcy.
1,100	89	"	"	is still unpaid
$5,872	86			

By Iselin & Co.'s said statement and books the above $5,872.86 was replaced by Dibblee & Co. by 16 notes, the avails of recent sales, viz: Nos. 1327, 1325, 1492, 1424, 1332, 1333, 1473, 1346, 1351, 1475, 1352, 1440, 1370, 1368, 1366, and 1425, amounting to..... 6,039 10

$22,286 90

The said statement of A. Iselin & Co. alleges that after the 4th of December, 1868, they kept but one record of all the collaterals, and that they had at that date attached to notes

No. 755	and renewals		.....	$24,051 60
" 756	"	"	.....	22,286 90
" 757	"	"	.....	16,902 11
				$63,240 61

These notes, amounting to $63,240.61, were the avails of sales made in the fall of 1868, and most all, if not all, fell due in January and February, 1869. Of this $63,240.61 Iselin & Co. never collected nor received one dollar; all that was paid was paid to Dibblee & Co., and used by them in their business, as is hereinafter shown.

JANUARY 15, 1869.—By Iselin & Co.'s said statement, Dibblee and Co. reported as collected notes amounting to.. $16,861 45

$46,379 16

From Iselin & Co.'s books it appears that 36 notes were returned to Dibblee & Co. at this date, viz: Nos. 1273, 1250, 1264, 1395, 1270, 1254, 1439, 1391, 1427, 1410, 1414, 1415, 1252, 1262, 1266, 1271, 1284, 1291, 1249, 1298, 1398, 1435, 1304, 1328, 1324, 1424, 1346, 1351, 1274, 1281, 1305, 1297, 1472, 1357, 1431, and 1465.

62 Dibblee & Co.'s books show that of the above $15,747.87 was paid as follows:

$109	85	was	paid in	October, 1868.
100	00	"	"	November, "
2,943	25	"	"	December, "
12,593	77	"	"	January, 1869.
$15,744	87			

By Iselin & Co.'s said statement and books the above sum was replaced by Dibblee & Co. by 47 notes, viz: Nos. 1231, 1249, 1355, 1405, 1429, 1481, 1490, 1495, 1501, 1502, 1505, 1516, 1519, 1277, 1381, 1422, 1522, 1374, 1406, 1412, 1442, 1448, 1469, 1480, 1482, 1488, 1494, 1499, 1500,

1508, 1515, 1246, 1258, 1267, 1358, 1392, 1407, 1496, 1497, 1506, 1517, 1518, 1520, 1521, 1523, 1524, and 1526, amounting to $16,939 73

$63,318 89

From the 15th of January to the 5th of April, 1869, Iselin & Co.'s accounts show no alterations or exchanges of collaterals.

The said statement of Iselin & Co., alleges that on the 5th of April, 1869, Dibblee & Co. reported the whole remaining collaterals $63,318.98 as collected.

Herewith is a copy of a letter from Dibblee & Co., to Iselin & Co., of that date, the original of which was exhibited to me by Iselin & Co.

OFFICE OF H. E. DIBBLEE & CO.,
NO. 349 BROADWAY, COR. LEONARD ST.,
New York, April 5, 1869.

Messrs. A. ISELIN & CO.:

GENTLEMEN: With your permission we will withdraw the collaterals you hold for the payment of our notes to you, due April 7, 1869, for $18,000; April 19, 1869, for $20,000; and May 10, 1869, for $15,000; and substitute the following notes and accounts as per schedule hereto annexed, which notes and accounts we herewith hand you.

Yours, very respectfully,
(Signed) H. E. DIBBLEE & CO.

An examination of the books of Iselin & Co. shows that they had $65,013.15 of collaterals on that day.

The books of Dibblee & Co. show that of the above $65,013.15—

63

$894	35	had been paid in cash in October,	1868.
261	27	" " " " " " November,	"
903	33	" " " " " " December,	"
17,930	31	" " " " " " January,	1869.
16,804	82	" " " " " " February,	"
8,629	06	" " " " " " March,	"
758	76	was paid in cash in April,	"
348	77	" " " " " May,	"
7,986	52	had been exchanged for new notes by D. & Co.	
3,666	31	was assigned to Iselin & Co., to secure judgment.	
6,829	65	is still unpaid.	
$65,013	15		

Every dollar of the cash collected as above, was collected by H. E. Dibblee & Co., and used by them in their business.

On the 5th of April, 1869, Dibblee & Co. wrote a letter to Iselin & Co.—a copy of which is above—requesting permission to withdraw the above-mentioned $63,318.99 or $65,013.15 of collateral; and the books of Iselin & Co. show, that on that day they substituted notes, and open accounts, the avails of sales, mostly made in March and

April, 1869, viz: 60 notes, Nos. 1536, 1541, 1543, 1544, 1546, 1547, 1558, 1548, 1549, 1550, 1551, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, amounting to $25,771.53, and 97 open accounts, viz: Nos. 69, 69, 71, 76, 189, 191, 191, 191, 191, 192, 221, 245, 255, 279, 306, 320, 352, 352, 373, 375, 418, 427, 428, 428, 434, 435, 442, 465, 473, 474, 481, 483, 490, 527, 530, 540, 545, 547, 550, 551, 551, 552, 558, 564, 567, 569, 570, 612, 617, 623, 624, 637, 638, 638, 639, 639, 640, 640, 643, 643, 646, 647, 652, 652, 653, 653, 653, 656, 665, 668, 673, 674, 674, 676, 679, 679, 683, 684, 685, 692, 694, 703, 706, 708, 712, 713, 717, 717, 718, 719, 725, 726, 727, 744, 750, 750, 754, amounting to $36,255.81.

Total..... $62,027 34

The following open accounts, appearing by the books of Iselin & Co. to have been pledged by Dibblee & Co. to them, on the 5th of April, 1869, as shown above, are closed upon the books of Dibblee & Co. by credit of notes, dated at the dates mentioned below, and the bill-book of Dibblee & Co. shows that said notes were received by them some time in April, 1869, viz:

64

Nos.					Nos.				
418	$433 13	February	27,	1869	674	$606 80	March	26,	1869
656	164 97	March	11,	"	527	394 60	"	26,	"
668	290 22	"	16,	"	540	538 27	"	29,	"
643	228 82	"	17,	"	221	145 17	"	30,	"
435	607 76	"	18,	"	676	412 47	"	30,	"
564	298 15	"	19,	"	530	156 40	"	30	"
665	255 42	"	19,	"	279	376 89	April	1,	"
676	992 43	"	23,	"	427	179 57	"	2,	"
639	548 55	"	24,	"	552	820 16	March	25,	"
750	133 33	"	24,						
	$3,952 78					$3,630 33			
						$3,952 78			
						$7,583 11			

Iselin & Co.'s books show that on the 8th of April, 1869, they discounted H. E. Dibblee & Co.'s note for them, dated April 7, 1869, at 60 days, No. 1073, for $8,000, and that Dibblee & Co. on that day gave them as collateral the following notes and open accounts, viz, notes Nos. 1607, 1618, 1632, 1634, 1635, 1637, 1638, 1642, 1643, 1553, 1584, 1620, 1570, 1552, and open accounts, Nos. 427, 455, 464, 469, 470, 471, 618, 636, 720, 767, 768, 768, 769, 770, 774, 779, 780, 781, 782, 792, 793, 800, 803, and 803, amounting to..... 10,050 53

$72,077 87

Between April 5th and April 30th, 1869, the following notes and open accounts were taken from the collaterals of April 5, 1869, and from the collaterals attached to note

No. 1073, discounted April 8, 1869, and returned to Dibblee & Co.—the larger part on the 24th of April, 1869—as the books of Iselin & Co, show, 14 notes Nos, 1548, 1549, 1551, 1611, 1635, 1582, 1580, 1569, 1618, 1577, 1575, 1579, 1607, and 1699, and open accounts, Nos. 221, 279, 375, 418, 435, 465, 473, 540, 564, 570, 612, 639, 639, 440, 643, 646, 652, 656, 665, 668, 674, 676, 684, 694, 713, 718, 719, 750, 727, 464, 469, 618, 636, 769, 770, 774, 782, 803, 428, 530, 550, 617, 440, 647, 712, 738, 191, 191, 527, 725, 306, 793, and 653, amounting to..... 23,696 26

$48,381 61

The books of Dibblee & Co. show that of the above $23,696.26—

$312 68	was paid in March, 1869.
10,139 48	" April, "
203 57	" to the assignee in bankruptcy.
9,306 58	Dibblee & Co. took new notes for, as they allege, in April, 1869.
3,734 25	was assigned to Iselin & Co. to secure judgment, May 1, 1869.
$23,696 26	

65 By Iselin & Co.'s books, Dibblee & Co. replaced the above $23,696.26, mostly on the 27th of April, 1869, by 51 notes, the avails of recent sales, made principally in March and April, 1869, amounting to..... 25,385 60

$73,767 21

The counsel for the complainant further puts in evidence articles of partnership of the former firm of H. E. Dibblee & Co., dated January 1, 1855, a copy of which is, by consent, received as an exhibit in place of the original, is marked " Exhibit No. 4, J. B. M., 20, 10, '70," and is as follows:

" Articles of copartnership made this the first day of January, in the year of our Lord one thousand eight hundred and fifty-five, between Henry E. Dibblee, of the town of Southfield, Richmond County, State of New York, and Richard W. Clark, of the city of Brooklyn, Kings County and State of New York, and Addison G. Bickford, of the city of New York.

" ARTICLE 1ST. It is agreed that this copartnership is made for one year, and that the name and style of the firm shall be H. E. Dibblee & Co.

" ARTICLE 2D. It is agreed that the concern shall allow to each partner interest on his capital at the rate of 7% per annum.

" ARTICLE 3D. It is agreed that the profit and loss of the concern shall be divided as follows, viz: Sixty-four one-hundredths to the said Henry E. Dibblee; one-fifth or twenty one-hundredths to the said Richard W. Clark, and sixteen one-hundredths to the said Addison G. Bickford.

"ARTICLE 4TH. It is agreed that if John D. Mosely is employed as a clerk by the firm, his services shall be paid by the said Henry E. Dibblee.

"ARTICLE 5TH. It is agreed that the said Henry E. Dibblee shall have the privilege to dissolve this copartnership at any time he may choose to do so.

"ARTICLE 6TH. It is agreed that when this copartnership shall expire by its own limitation, or upon the dissolution of this copartnership by the said Henry E. Dibblee, or upon its dissolution from any cause whatever, the said Henry E. Dibblee shall alone have the settlement and winding up of the concern, and the authority to use the sig-
66 nature and the name of the firm for such purpose, and that neither of the other partners shall have any authority whatever to receive or pay out any funds due to or from the firm, neither shall they have any authority to make any settlement or use the signature or name of the firm for any purpose whatever; the object being to give the said Henry E. Dibblee the whole and sole control and management of the settlement of the affairs of this copartnership. And it is further agreed, that if the business hereby agreed to be carried on is continued by the parties hereto for a period longer than one year without any new expressed or written agreement, that the interest of the several parties thereih and their respective shares of the profit and loss thereof shall be as provided and specified in this agreement, and all their respective rights and liabilities shall depend upon and be governed by the provisions of this agreement.

"HENRY E. DIBBLEE.
"RICH. W. CLARK.
"ADDISON G. BICKFORD."

"Signed in presence of—
"CORN'S COMSTOCK.
"ADDISON B. GATES."

The counsel for the complainant further puts in evidence an agreement between Adrian Iselin and H. E. Dibblee & Co., dated May 25, 1865, a copy of which is, by consent, received as an exhibit in place of the original, is marked "Exhibit No. 5, J. B. M., 20, 10, 70," and is as follows:

[U. S. int.-rev. 5-c. stamp, cancelled.]

"Memorandum of agreement made this twenty-fifth day of May, eighteen hundred and sixty-five, by and between Adrian Iselin, of the city of New York, of the first part, and the firm of H. E. Dibblee & Co., of the same place, of the second part.

"Whereas Ezra R. Dibblee, the former assignee of said firm, in trust for the benefit of the creditors thereof, has, at the request and by the authority of the creditors of the said firm, re-assigned and transferred to the said H. E. Dibblee & Co., all the assets of the said firm remaining undistributed in his hands, the same to be had and holden to the said H. E. Dibblee & Co. in trust, and for and upon the same uses and purposes as were expressed concerning the same in the deeds of assignment to the said Ezra R. Dibblee;

"And whereas the said Adrian Iselin, besides being named as a pre-
67 ferred creditor under the said assignment, has also acquired by purchase an interest now amounting to about one hundred and

ninety thousand dollars in the debts which are specifically named in Schedule C, attached to the said assignment, and has arranged and now expects to purchase the remaining debts mentioned in said Schedule C, and the said Adrian Iselin has consented to the making and delivery of the said re-assignment, and the said H. E. Dibblee & Co. have consented to accept the same upon the mutual promise and agreement of the parties hereto to execute and deliver these presents and carry the same into effect:

"Now this memorandum witnesseth that the said parties, for and in consideration of the premises and of their mutual and respective promises and agreements herein contained, have promised and agreed, and do hereby promise and agree, to and with each other as follows, that is to say: After so much of the proceeds of the said assets as shall be necessary for that purpose shall have been applied by the said H. E. Dibblee & Co. to the payment and satisfaction of the debts remaining unpaid, mentioned in Schedules A and B, attached to the said assignment, the residue of such proceeds shall be applied in the first instance towards the re-imbursing Adrian Iselin and his estate the sums heretofore advanced or expended, or which shall hereafter be advanced or expended by him in affecting the purchase of any such debts as are mentioned in said Schedule C, with the interest on the sums so heretofore or hereafter advanced or expended, and also the indebtedness to said Adrian Iselin mentioned in said Schedule C; and any surplus of said assets remaining after such re-imbursement shall be divided, fifteen per centum thereof in the first instance to the said H. E. Dibblee & Co., for their services in the collection and realization of the said assets, and the remainder of such surplus shall be distributed and divided as fast as the same shall be realized to and among the said Adrian Iselin on the one side and the said H. E. Dibblee & Co. on the other, and to and among their representatives equally, share and share alike.

"In witness whereof the said parties to this memorandum have hereunto interchangeably set their hands the day and year first above written.

"ADRIAN ISELIN.
"H. E. DIBBLEE & CO.

"Approved:

"RICH'D W. CLARK.
"ADDISON G. BICKFORD."

"Stamped, signed, and delivered in presence of—
"W. A. SCHMITTHENNER.
"C. W. BANGS.

68 "CITY AND COUNTY OF NEW YORK, *ss:*

"On this twenty-fifth day of May, eighteen hundred and sixty-five, before me, personally, came Adrian Iselin, Henry E. Dibblee, Richard W. Clark, and Addison G. Bickford, to me known to be the same persons described in, and who executed the same, and severally acknowledged to me that they executed the same.

"CHARLES W. BANGS,
"*Notary Public, New York City.*"

The counsel for the complainant further puts in evidence an assignment by H. E. Dibblee to Adrian Iselin, dated January 11, 1866, a copy of which is, by consent, received as an exhibit in place of the original, is marked "Exhibit No. 6, J. B. M., 20, 10, '70," and is as follows:

[U. S. i.-r. 5-c. stamp, cancelled.]

This memorandum, made this eleventh day of January, eighteen hundred and sixty-six, by and between Henry E. Dibblee, of the city of New York, of the first part, and Adrian Iselin, of the same place, of the second part, witnesseth, that in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and of such other and further sum or sums as the said party of the second part shall hereafter from time to time advance and pay over to the said party of the first part, or for his use, the said party of the first part hereby assigns, transfers, and sets over unto the said party of the second part all the right, title, and interest of the said party of the first part hereto, of, in, and to the assets of the firm of H. E. Dibblee & Co., of the city of New York, under a certain agreement dated the twenty-fifth day of May, eighteen hundred and sixty-five, made between the said party of the second part hereto, and the said firm of H. E. Dibblee & Co., to have and to hold the same unto the said party of the second part as security for the repayment to him of all and every sum or sums of money which he may hereafter advance or pay over to or for the said party of the first part in the course of his business. And the said party of the second part doth hereby promise and agree, for himself and his executors, administrators, or assigns, that upon the repayment of the moneys which may be due at any time for advances made by him to said party of the first part, the said
69 assets, or the interest therein hereby conveyed, shall be re-assigned to said party of the first part, his executors, administrators, or assigns.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

HENRY E. DIBBLEE. [L. S.]
A. ISELIN,
By JOHN A. ISELIN, *Att'y.* [L. S.]

Stamped, sealed, and delivered in presence of—

(The counsel for the defendants Iselin objects to the admission of Exhibits Nos. 4, 5, and 6, as being irrelevant and impertinent, and as having no bearing upon the issues raised by the pleadings in this action; waiving, however, any objection that the originals should be put in as exhibits in place of the copies.)

The counsel for the complainants further puts in evidence a letter from A. Iselin & Co. to H. E. Dibblee & Co., dated August 6th, 1868, which is admitted by the counsel for the defendants Iselin to be genuine, and to be the same letter as referred to in Exhibit No. 2, as dated "August , 1868," which is marked "Exhibit No. 7, J. B. M., 20, 10, '70," and is as follows:

"NEW YORK, *August 6th*, 1868.

"Messrs. H. E. DIBBLEE & Co.

"*Gents:* Enclosed we beg to hand you $72,170.42 in notes, as per memorandum.

"You will please collect them for our account.

"Yours, truly,

"A. ISELIN & CO."

The examination was here adjourned to October 31st, 1870, at 1 p. m.

NEW YORK, *October 31st*, 1870.

The parties appear, and the examination is proceeded with:

70 The counsel for complainant further calls as a witness, Ezra R. Dibblee, who, being duly sworn, deposes and says, as follows:

Q. 1. Are you a brother of Henry E. Dibblee, one of the bankrupts?

A. I am, sir.

Q. 2. Prior to 1865, did you know that he was in partnership in a firm of H. E. Dibblee & Co.?

(Objected to as being irrelevant to the issues in this action.)

A. He was prior to 1862, to my knowledge.

Q. 3. Did that firm make an assignment to you for the benefit of their creditors?

(Same objection as above.)

A. They did.

Q. 4. Have you that assignment with you?

(Same objection as above.)

A. I have.

Q. 5. Please produce it.

(Same objection as above.)

A. I now produce it. It is dated Sept. 15th, 1862.

(The counsel for complainant offers the paper in evidence. Its admission is objected to by the counsel for the defendants Iselin, on the grounds above stated; he consenting, however, without waiving said objection, that the examiner may make a copy thereof, which, by consent of both parties, shall be used in the place of the original, and marked "Exhibit No. 8, J. B. M., 31, 10, '70." The paper is so copied and marked, and is as follows:

This indenture made the fifteenth day of September, eighteen hundred and sixty-two, by and between Henry E. Dibblee, Richard
71 W. Clark, and Addison G. Bickford heretofore partners in trade, doing business in the city of New York, under the firm-name of "H. E. Dibblee & Co." parties of the first part hereto, and Ezra R. Dibble of the same city, party of the second part thereto; whereas the parties of the first part are indebted to divers persons in various sums of money, which by reason of losses and misfortunes in business, the said parties of the first part are unable to pay in full, or at maturity, but to the payment whereof they desire to have their property and estate applied in the manner hereinafter directed, now, this indenture, witnesseth, that the said parties of the first part, for and in consideration of the premises and of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, conveyed, assigned, transferred, and set over, and by these presents do grant, bargain, and sell, convey, assign, transfer, and set over unto the said party of the second part, all and singular the property and estate (except such as is by law exempt from seizure and sale under execution, or other process or proceedings,) of them the said parties of the first part, of whatsoever nature, or wheresoever situate the same may be; to have and to hold the same to the said party of the second part and his successors in the trusts hereby created, in trust nevertheless, and to and for the uses and purposes hereinafter declared of and concerning the same, that is to say, in trust to take and become possessed of the same, and to convert the same into money by sale or collection thereof,

as the same may require, and to appropriate, distribute, and apply the proceeds thereof, firstly, to the payment of the lawful expenses of creating and executing the trusts hereby created, including the compensation and commission of the said party of the second part, and of such agents and servants as he may lawfully employ in and about the execution of the said trusts; secondly, to the payment and discharges rateably and proportionately, until such payment and discharge shall be full and complete, of the several debts due and owing by the said parties of the first part, and specified in the schedule hereunto annexed, marked "Schedule A," and the interest due, or to become due thereon; thirdly, after payment of the said debts mentioned in said Schedule A, and the interest due, or to accrue thereon, then to the payment and discharge rateably and proportionately until such payment shall be full and complete, of the several debts due and growing due by said parties of the first part mentioned and specified in the schedule hereto annexed, marked "Schedule B," and the interest due, or to accrue thereon; and after payment in full of the said debts mentioned in said
72 "Schedule B," and the interest due, or to accrue thereon, then to the payment and discharge rateably and proportionately, until such payment and discharge shall be full and complete, of the several debts due and owing by the said parties of the first part, mentioned and specified in the schedule hereto annexed, marked "Schedule C," and the interest due, or to accrue thereon, and then, lastly, to the payment and discharge rateably and pro*por*portionately of all and other lawful debts and demands due or accruing against the said parties of the first part, until the same shall be fully paid and satisfied; and for the purposes of this instrument, the said parties of the first part do hereby nominate, constitute, and appoint, and in their place and stead, put and depute the party of the second part, and his successors in the said trusts hereby created, to be the true and lawful attorney and attorneys irrevocable of them, the said parties of the first part, and each of them in their names, or in the names of each of them, or in the name of said firm, or lawfully otherwise but for the uses, trusts, and purposes hereinabove set forth to ask, demand, reduce to possession, sue for, recover, and receive all and singular the property and estate hereinabove conveyed and assigned, or intended so to be, and full and sufficient receipts, acquittances, and discharges in the law therefor to give, and that as truly and effectually to all intents and purposes, as the said parties of the first part could do if these presents had not been executed; and the said party of the second part doth hereby accept the trusts hereby created, and doth covenant and agree to and with the said parties of the first part faithfully to execute and perform the same.

In witness whereof, the said parties have hereunto, and to a duplicate hereof, executed at the same time herewith, set their hands and seals the day and year first above written.

HENRY E. DIBBLEE. [L. S.]
RICHARD M. CLARK. [L. S.]
ADDISON D. BICKFORD. [L. S.]
EZRA R. DIBBLEE. [L. S.]

Sealed and delivered in presence of—
JNO. S. PATTERSON.

CITY AND COUNTY OF NEW YORK, *ss:*

On this fifteenth day of September, in the year one thousand eight hundred and sixty-two, before me personally came Henry E. Dibblee,

Richard W. Clark, Addison G. Bickford, and Ezra R. Dibblee, to me known to be the individuals described in, and who executed the foregoing assignment, and severally acknowledged that they executed the same.

JNO. S. PATTERSON,
Notary Public, city and county of New York.

73 SCHEDULE A.

Our note in favor of Dibblee, Work & Moore, due	Sept.	23,	1862,	$1,400 00
" " " " " "	"	24,	"	2,600 00
" " " " " "	Oct.	3,	"	1,600 00
" " " " " "	"	3,	"	2,000 00
" " " " " "	"	8,	"	1,200 00
" " " " " "	"	17,	"	4,000 00
" " " " " "	"	18,	"	2,400 00
" " " " " "	"	31,	"	900 00
" " " " " "	Nov.	4,	"	1,700 00
" " " " " "	"	21,	"	1,400 00
A. Iselin & Co. and interest from	January	1,	1862.	35,863 55
W'm Lottimer & Co. " "	"	1,	"	15,905 12
J. & A. Petrie & Co. " "	"	"	"	2,158 29
Mrs. S. E. Stowell " "	Sept.	13,	"	9,793 87
Henry Stowell, " "	"	13,	"	7,345 42
Ann R. Pray, " "	"	13,	"	3,576 82
Anna J. Pray, " "	"	13,	"	1,759 17
Eliza C. Pray, " "	"	13,	"	1,796 20
A. B. Gates, " "	Febry	15,	"	3,167 58
John McIntire, " "	April	11,	"	399 00
James Kooken, " "	Jan'y	1,	"	2,596 64
S. V. R. Moore " "	Sept.	13,	"	2,120 79
P. Walker, " "	"	13,	"	2,975 44
J. J. Krauss, " "	"	13,	"	1,120 25
Buckham & Swales, due	"	15,	"	379 92
Buckham, Van Cott & Bangs, "	"	15,	"	280 98

Witness:
JNO. S. PATTERSON.

HENRY E. DIBBLEE.
RICHARD W. CLARK.
ADDISON G. BICKFORD.

SCHEDULE B.

J. A. Davidson, and interest from	September	13,	1862,	$ 387 32
S. V. R. Moore, " "	"	"	"	2,120 80
P. Walker, " "	"	"	"	2,675 44
J. J. Krauss, " "	"	"	"	1,120 26
The holder of a note given to H. Ackerman, due	November	6,	1862.	513 90

Witness:
JNO. S. PATTERSON.

HENRY E. DIBBLEE.
RICHARD W. CLARK.
ADDISON G. BICKFORD.

74 SCHEDULE C.

The holder of a note given to John Syz & Co .. Due	April	27,	1861.	$2,930 30
Sam'l McLean & Co	"	16,	"	2,767 63
" "	"	28,	"	2,767 63
Benkard & Hutton,	"	23,	"	2,264 95
Sorchan, Allien & Diggleman	"	26,	"	2,715 31
Gourd, Freres & Co.	"	26,	"	1 587 53
H. De Goer & Rifflard	"	30,	"	2,684 81
Hobley Bros.	"	28,	"	948 29
William Watson & Co.	May	4,	"	1,166 63
Gillian Bros.	"	6,	"	721 04
Escher & Co.	"	18,	"	986 88
Lewis & Co.	"	22,	"	1,016 08
John Q. Adams	"	12,	"	528 25
Guiterman Bros.	"	3,	"	697 27
Fairchild & Fanshawe	"	3,	"	2,660 45
Almy, Patterson & Co	"	14,	"	1,525 13

	Bailey & Southard	"	11,	"		1,181 63
	Rosshard & Schlipfer	July	21,	"		302 13
	Schnuffner & Muldenes	Aug.	29,	"		62 80
	Van Wyck, Townsend & Warren	Sep.	19,	"		1,874 50
	" "	"	29,	"		1,874 50
	Haggerty & Co.	"	16,	"		1,282 66
	Kobbe & Corlies	"	19,	"		1,214 42
	Wilmerding, Hoguet & Humbert	"	20,	"		659 32
	" "	"	26,	"		1,818 34
	Wilmerdings & Mount	"	18,	"		1,381 86
	Hagerty & Co.	"	28,	"		2,617 95
	Loeschigk, Wesendonck & Co	"	18,	"		871 41
	" "	"	23,	"		964 99
	" "	"	30,	"		1,286 68
	Babcock & Milnor	"	20,	"		645 56
	Sorchan, Allien & Diggleman	"	19,	"		1,055 06
	Babcock & Milnor,	"	30,	"		860 75
	Wilmer, Cannell & Co	"	19,	"		474 53
	Schondoriff & Gentil	"	21,	"		172 18
	T. C. Foote & Taylor	"	21,	"		207 33
	Rosshard & Schlipfer	"	21,	"		307 42
	Charles Payen & Co	"	22,	"		1,157 21
	Passavant & Co	"	22,	"		877 83
	J. & A. Petrie & Co	"	22,	"		910 64
	F. T. Aschman & Co	"	23,	"		1,065 61
	C. Morlat & Co	"	18,	"		1,128 51
	A. Iselin & Co	"	23,	"		881 70
	"	"	29,	"		1,175 63
	H. Hennequin & Co	"	23,	"		366 01
	Fred. Victor & Achelis	"	27,	"		646 53
	F. & A. Rusch	"	28,	"		1,002 58
	C. Gignoux & Co	"	28,	"		2,204 63
	C. F. Dambmann & Co	"	30,	"		174 64
	Van Wyck, Townsend & Warren	"	3,	"		2,177 84
	Wilmerdings & Mount	"	29,	"		1,321 62
75	Wilmerding, Hoguet & Humbert	Oct.	7,	1861		$1,818 35
	J. C. Howe & Co	"	5,	"		433 19
	C. Morlat & Co	Nov.	2,	"		1,131 69
	Guillaume, Fargis & Co	"	28,	"		257 70
	Schondorff & Gentil	"	17,	"		935 98
	Lehmair Bros	"	1,	"		248 38
	Passavant & Co	"	4,	"		1,170 20
	J. & A. Petrie & Co	"	4,	"		1,214 41
	A. Person & Harriman	"	2,	"		1,122 83
	A. Iselin & Co	"	5,	"		1,175 85
	Do.	"	10,	"		1,175 85
	Loeschigk, Wesendonck & Co	"	6,	"		1,286 92
	Do. do.	"	11,	"		1,286 92
	Do. do.	"	17,	"		1,286 92
	Do. do.	"	21,	"		2,124 36
	Townsend & Yale	"	7,	"		478 09
	Babcock & Milnor	"	13,	"		499 17
	J. W. Schulten & Lotner	"	15,	"		2,493 98
	Wilmer, Cannell & Co	"	16,	"		320 00
	A. Person & Harriman	"	12,	"		1,123 04
	Becar & Co	"	16,	"		910 56
	W'm Lottimer & Co	"	16,	"		945 50
	"	"	21,	"		945 50
	Linder & Kingsley	"	21,	"		1,014 26
	Fanshawe, Melliken & Townsend	"	23,	"		2,042 00
	" "	"	22,	"		761 61
	J. W. Cochrane & Co	"	24,	"		456 80
	David Douglas & Co	"	28,	"		700 16
	L. & B. Curtis & Co	"	21,	"		314 55
	Robert Slimmon & Co	"	26,	"		702 45
	Osborn & Cheesman	"	7,	"		90 97
	J. & A. Petrie & Co	"	25,	"		1,001 82
	F. T. Aschman & Co	"	21,	"		365 13
	Auffmoult, Hessenberg & Co	"	17,	"		211 95
	Denison, Buisse & Co	"	22,	"		348 19

Flues & Co	"	13,	"		521 67
J. A. Phelps	"	19,	"		489 27
Edward T. Snelling	"	21,	"		216 31
J. W. Schulten & Lotner	Dec.	21,	"		558 96
J. A. Humphrey	"	6,	"		477 30
Winzer, Tailer & Osbry	"	24,	"		641 40
" "	"	13,	"		142 10
Linden & Kingsley	"	14,	"		1,013 25
" "	"	20,	"		634 64
" "	"	3,	"		1,014 25
W'm Lottimer & Co	"	1,	"		945 50
"	"	4,	"		945 33
J. W. Cochrane & Co	"	20,	"		247 56
Becar & Co	"	23,	"		241 70
Fanshawe, Melliken & Townsend	"	4,	"		2,042 57
William Brunner & Co	"	25,	"		951 10
Flues & Co	"	13,	"		524 66
J. A. Phelps	"	7,	"		644 07
"	"	12,	"		315 24
Loeschigk, Wesendnock & Co	Jan.	18,	1862		886 46
" "	"	23,	"		981 65
" "	"	30,	"		1,308 88
76 Babcock & Milnir	Jan.	20,	1862		$656 70
" "	"	30,	"		875 63
Sorchan, Allien & Diggleman	"	19,	"		1,073 25
Wilmer, Cannell & Co	"	19,	"		482 73
Cha's Payen & Co	"	22,	"		1,177 19
Passavant & Co	"	22,	"		892 64
J. & A. Petrie & Co	"	22,	"		926 37
F. T. Aschman & Co	"	23,	"		1,084 01
C. Marlot & Co	"	18,	"		1,148 00
A. Iselin & Co	"	23,	"		896 93
"	"	29,	"		1,195 92
Joseph Fisher & Co	"	26,	"		1,131 94
F. Victor & Achiles	"	27,	"		657 69
F. & A. Rusch	"	28,	"		1,019 90
C. F. Dambmann & Co	"	30,	"		177 56
C. Angrave	"	27,	"		409 57
C. Marlot & Co	Feb.	2,	"		1,151 18
Passavant & Co	"	4,	"		1,190 40
J. & A. Petrie & Co	"	4,	"		1,235 38
A. Person & Harriman	"	2,	"		1,142 23
" "	"	12,	"		1,142 44
A. Iselin & Co	"	5,	"		1,196 15
"	"	10,	"		1,196 15
Loeschigk, Wesendonck & Co	"	6,	"		1,309 13
" "	"	11,	"		1,309 13
" "	"	17,	"		1,309 13
Lefman, Keefer & Thomas	"	6,	"		658 00
" "	"	9,	"		658 53
Steinberg & Lichtenstadter	"	7,	"		869 93
S. Housman & Co	"	7,	"		574 50
Cha's Scott & Co	"	9,	"		420 26
W'm Lottimer & Co	"	16,	"		961 82
"	"	21,	"		961 82
J. R. Jaffray & Sons	"	16,	"		128 07
Linden & Kinsley	"	21,	"		1,031 76
David Douglass & Co	"	28,	"		712 25
Hughes, Dupuy & Co	"	2,	"		226 00
J. N. Phelps	"	4,	"		495 60
"	"	11,	"		873 82
W'm Lottimer & Co	March	3,	"		961 83
" "	"	4,	"		961 28
Linden & Kingsley	"	3,	"		1,031 37
W'm Brennan & Co	"	14,	"		1,767 20
J. L. Little & Co	"	17,	"		490 84
" "	"	17,	"		544 45
Jenkins & Huntington	"	31,	"		338 76
J. Deppeler	April	18,	"		206 65

Lane, Lawson & Co		"	26,	"			1,776 44
Joseph Fisher & Co		"	29,	"			1,131 94
Jenkins & Huntington		"	22,	"			174 63
J. Wilcox & Co		Nov.	5,	"			200 00
Howell & King		May	1,	"			457 87
Withereld & Young		"	9,	"			228 90
Arnold, Constable & Co		"	10,	"			181 68
Thomas Drew & Co		"	12,	"			226 35
Cha's Scott & Co		"	12,	"			427 82
77 Mount, Hall & Co		Nov.	17,	1862			$828 47
" "		"	17,	"			240 93
" "		"	20,	"			200 56
P. Donald		May	17,	"			449 69
Lane, Lamson & Co		"	22,	"			1,598 00
Howell & King		June	9,	"			207 12
" "		July	31,	"			465 77
Witherald & Young		"	8,	"			361 60
F. T. Peet & Co		Aug.	4,	"			956 72
O. Vant & Co		Sept.	3,	"			340 84
Mount, Hall & Co		"	17,	"			985 78
W'm Hoye & Co		"	20,	"			256 50
"		Nov.	20,	"			256 50
Shack & Hotop		"	19,	"			302 45
C. Greppo		"	23,	"			555 38
Lefman, Kufer & Thomass		"	25,	"			90 68
M. D. Benjamin & Co		"	12,	"			310 38
R. Fischer, Hachez & Co		"	19,	"			222 83
Gustav Sundorff		"	23,	"			79 47
Corliss & House		Dec.	3,	"			107 00
Fred. Butterfield & Co		Feb.	5,	1863			2,196 29
Oscar Proess & Co		"	4,	"			189 84
Cha's Spencer		Sep.	24,	1862			156 35
ACCOUNTS DUE—							
Noel & Oelbmann		Ap'l	26,	1861			55 00
E. Bredt & Co		"	2,	"	33 06		
"		"	12,	"	28 32		
						61 38	
A. Iselin & Co		Sept.	6,	"	12 05		
"		Oct.	16,	"	76 71		
"		"	25,	"	29 27		
"		Nov.	12,	"	31 20		
"		"	19,	"	107 01		
"		"	21,	"	584 29		
"		"	25,	"	138 65		
"		"	29,	"	407 29		
"		Dec.	1,	"	46 50		
"		"	2,	"	194 54		
"		"	3,	"	86 06		
"		"	4,	"	93 00		
"		"	6,	"	35 63		
"		"	7,	"	46 50		
"		"	7,	"	185 16		
"		"	12,	"	25 00		
"		"	20,	"	31 6.		
"		"	22,	"	8 25		
"		"	22,	"	17 12		
						2,155 87	
C. F. Dambmann & Co		Nov.	11,	"			1,019 07
William Lottimer & Co		Sept.	4,	1861	6 00		
" "		"	16,	"	13 00		
" "		Dec.	12,	"	315 19		
" "		"	12,	"	221 10		
" "		"	15,	"	364 75		
" "		"	15,	"	434 43		
" "		"	14,	"	36 97		
" "		"	16,	"	223 06		
78 William Lottimer & Co		Dec.	19,	1861	$34 66		
" "		"	22,	"	100 05		
" "		"	23,	"	14 50		
"		"	28,	"	33 00		

"	"	.....	"	29,	"	71 27		
"	"	.....	"	31,	"	26 50		
"	"	.....	Jan.	1,	1862	175 53		
"	"	.....	"	2,	"	98 76		
"	"	.....	"	5,	"	373 00		
"	"	.....	"	7,	"	22 50		
"	"	.....	"	7,	"	8 50		
"	"	.....	"	6,	"	10 50		
"	"	.....	"	12,	"	42 00		
"	"	.....	"	13,	"	14 50		
"	"	.....	"	16,	"	31 50		
							2,671	27
Guiterman Bros			Nov.	17,	1861		130	49
Joseph Sands			"	18,	"		112	47
Austin, Kelly & Co			"	23,	"		328	31
Johnston, Shephard & Saunders			Oct.	8,	"		85	25
Wilmerding, Hoguet & Humbert			"	7,	"		136	77
Lane & Guild			"	15,	"		18	85
William Watson & Co			Dec.	5,	"		174	20
H. Hennequin & Co			Nov.	18,	"		164	25
Crane, Hamilton & Ripley			Mar.	28,	"		20	97
A. Person & Harriman			Dec.	5,	"		451	29
Meeker & Maidhoff			Oct.	13,	"	6 25		
"	"	.....	Nov.	16,	"	80 25		
"	"	.....	"	17,	"	13 50		
"	"	.....	"	19,	"	25 50		
"	"	.....	"	22,	"	61 50		
"	"	.....	Dec.	1,	"	7 00		
"	"	.....	"	2,	"	17 00		
"	"	.....	"	4,	"	4 25		
"	"	.....	"	5,	"	20 50		
"	"	.....	"	7,	"	3 00		
"	"	.....	"	13,	"	1 38		
						$240 13		
		Less m'd'se July		25,	1861	54 12		
							186	01
Smith & Brouwer			due Dec.	6,	"		171	37
C. Angrave			Nov.	15,	"		503	88
Thirion, Maillard & Co			"	23,	"		138	84
D. & R. Stirratt			"	25,	"		40	74
Strange & Bro			"	24,	"		123	45
Geo. D. Parrist			"	21,	"		209	65
C. Neuman, ag't			Dec.	13,	"		3	82
M. Cohn			"	31,	"		2	68
David Douglas & Co			Nov.	20,	1861		370	36
F. Victor & Achiles			"	18,	"		564	78
Guillaume, Fargis & Co			"	12,	"		200	00
[illegible] & A. Rush			Oct.	25,	"	32 81		
"		.....	Nov.	10,	"	321 36		
"		.....	"	21,	"	533 79		
"		.....	"	25,	"	35 59		
							923	55
79	Sorchan, Allien & Diggleman		Nov.	20,	1861		$269	17
	Geo H. Stuart & Co		"	17,	"	72 00		
	"	.....	"	22,	"	22 00		
	"	.....	"	26,	"	32 00		
	"	.....	"	28,	"	87 00		
	"	.....	Dec.	5,	"	25 00		
							238	00
Christ, Jay & Co			Nov.	10,	"	546 59		
"		.....	"	12,	"	162 18		
"		.....	"	28,	"	1,609 56		
"		.....	"	29,	"	567 40		
"		.....	Dec.	2,	"	91 52		
"		.....	"	6,	"	85 00		
"		.....	"	12,	"	35 00		
							3,097	25

Benkard & Hutton	Oct.	31,	"	1,757 97		
"	Nov.	5,	"	913 08		
"	"	14,	"	179 84		
"	"	17,	"	83 81		
"	"	18,	"	34 12		
"	"	21,	"	188 23		
"	Dec.	1,	"	60 00		
					3,217	05
Sam'l McLean & Co	Nov.	21,	"	347 93		
"	Dec.	12,	"	207 67		
					555	60
M. D. Benjamin & Co	Dec.	1,	"		58	50
H. D. Goër & Rifflard	June	16,	"		48	00
A. Finch	May	7,	"		8	16
The holder of a note given to the Bank of the Republic, due	Sept.	19,	1862		6,457	32
"	"	23,	"		2,400	00
"	"	30,	"		5,317	56
"	Oct.	3,	"		4,241	81
"	"	10,	"		2,400	00
"	Nov.	7,	"		3,200	00
"	"	14,	"		1,700	00
American Exchange Bank	Sept.	18,	"		600	00
"	Oct.	11,	"		600	00
Importers' & Traders' Bank	Sept.	20,	"		800	00
"	Oct.	4,	"		2,250	00
Necarsulemen & Aub	Nov.	16,	1861		237	21
Bunstein Bros	"	21,	"		156	61
E. J. Brown & Co	"	18,	1861		177	60
Butt, Black & Guild	"	15,	1662		356	32
Linnernand, Grüff & Co	Oct.	20,	"		725	32
"	Nov.	15,	"		287	15
Farnham, Sutton & Co	March	3,	1862		383	38

HENRY E. DIBBLEE.
RICHARD W. CLARK,
ADDISON G. BICKFORD.

Witness:
JNO. S. PATTERSON.

80 Recorded in the office of the clerk of the city and county of New York, in a book for that purpose, vol. 9, page 304, September 16, 1862, at 10 h. 4m. a. m.

W'M C. CONNOR, *Clerk.*

Q. 6. Did you act under that assignment, and if so, for how long?
(Same objection as above.)
A. I acted under that assignment until some time in May, 1865.
Q. 7. What did you do then in reference to the assignment and the assigned property?
A. At the request and by the direction of all the creditors with the exception of two or three trifling in amount, I re-assigned the property and effects to H. E. Dibblee & Co.
Q. 8. Have you brought with you the consent of the creditors you speak of?
(Same objection as above.)
A. I have.
Q. 9. Please produce it.
(Same objection as above.)
A. I now produce it. It is dated May 24, 1865.
(The same consent is given in regard to this paper as was given in re-

gard to Exhibit No. 8, and a copy is made, is marked "Exhibit No. 9, J. B. M., 31, 10, '70," and is as follows:)

"The undersigned creditors of the late firm of H. E. Dibblee & Co. hereby severally and respectively each for himself, in consideration of the sum of one dollar to each of us in hand paid by said firm, do hereby consent and agree to and with the said firm, and to and with Ezra R. Dibblee, the assignee of the said firm, that the said assignee may re-assign and deliver to said firm, for their own use exclusively, all and singular the assets and effects of the said late firm now remaining undistributed in the hands of the said assignee, without receiving any consider-
81 ation of payment therefor from the said firm; and we authorize and request the said assignee to make such transfer and delivery accordingly.

"Witness our hands and seals this twenty-fourth day of May, eighteen hundred and sixty-five.

"A. ISELIN & CO.	[L. S.]	J. MCINTIRE.	[L. S.]
JAMES KOOKEN.	[L. S.]	ADDISON B. GATES.	[L. S.]
DIBBLEE, WORK & MOORE.	[L. S.]	SARRA E. STOWELL,	[L. S.]
W. A. PETRIE & CO.	[L. S.]	*By A. G. Bickford, her Att'y.*	
PINCKNEY WALKER.	[L. S.]	H. ACKERMANN.	[L. S.]
ANN R. PRAY.	[L. S.]	S. V. R. MOORE.	[L. S.]
ANNA J. PRAY.	[L. S.]	JOHN J. KRAUSS.	[L. S.]
ELIZA C. PRAY.	[L. S.]	J. A. DAVIDSON.	[L. S.]

Q. 10. Had you paid out of the proceeds of the assigned effects any, and how much, of the debts specified in the schedules annexed to the assignment?

(Same objection as above,)

A. I paid on the first two classes of creditors (Schedules A and B,) in different instalments or dividends, an amount equal to about ninety per cent. of the face of their claims.

Q. 11. Did Messrs. Iselin & Co. own, or profess to own, at that time, by purchase from any of the other creditors, the debts owing to them?

(Same objection as above.)

A. To what time do you refer?

Q. 12. I refer to the time of the re-assignment to H. E. Dibble & Co.

A. Yes, sir; Mr. Iselin at that time (I mean Messrs. A. Iselin & Co.) represented all the claims against H. E. Dibble & Co., except those others who signed the consent to and request for the re-assignment, and the three or four trifling amounts to which I have before referred.

Q. 13. Had you, at the time of the re-assignment, paid in full any of the debts which are represented in Schedule A?

(Same objection as above.)

82 A. I had not; I had paid them all in the proportion before stated. I think it was just ninety per cent. on Schedules A and B.

Q. 14. When you say that A. Iselin & Co. "represented" all the claims (with the exception of those mentioned in your answer to question No. 12) do you mean that they were the owners of those claims?

(Same objection as above.)

A. I knew them to become the owners by purchase.

Q. 15. Did you act for them in making any of those purchases?

(Same objection as above.)

A. I did not, to my recollection.

Q. 16. Do you know the amounts they paid for any of the debts purchased by them mentioned in Schedule C?

(Same objection as above.)

A. I have no personal knowledge, as I did not make the negotiations myself.

Q. 17. What did the property consist of at the time of the retransfer?

(Same objection as above.)

A. Of book accounts, bills receivable, and all such claims as generally grow out of a jobbing business.

Q. 18. Can you state whether they were worth enough to pay the balance due on the debts mentioned in Schedules A and B, in full, as that balance stood at the time of the retransfer?

(Same objection as above.)

A. Yes, I think sufficient could have been realized from those assets to pay that balance at that time.

Q. 19. Can you state whether any, and what amount more, could
83 have been realized, than stated in your last answer, to apply on the debts mentioned in Schedule C, after paying in full those mentioned in Schedules A and B?

(Same objection as above.)

A. It would have been impossible for me at that time to form any opinion as to the value of the assets, or what could be realized from them.

Q. 20. Have you had anything since to do with the collection of those assets which were re-assigned?

(Same objection as above.)

A. Nothing whatever.

Q. 21. Before that what effort had you made to collect the debts assigned to you by that assignment?

(Same objection as above.)

A. Every effort that I could; by writing to and seeing the debtors.

Q. 22. Were the debtors mostly residents of the Southern States?

(Same objection as above.)

A. They were mostly in the Southern States.

Q. 23. Have you been a merchant in the dry-goods business—and for how long?

(Same objection as above.)

A. I have; for about twenty-five or thirty years in this city.

Q. 24. Are you not able, as an expert, to say what percentage could be realized on such an amount of old debts, situated as those were which you re-assigned to H. E. Dibblee & Co., at the time of that re-assignment?

(Same objection as above.)

A. No, sir; I don't think any man living could at that time.

Q. 25. Have Messrs. Iselin & Co., or either of them, given you
84 any information since the re-assignment, as to how much has been realized on those debts since the time of that re-assignment?

(Same objection as above.)

A. None whatever; nor have I, to my knowledge, ever exchanged a word with either of the Messrs. Iselin on the subject.

(Cross-examination is waived by the counsel for the defendants Iselin.)

EZRA R. DIBBLEE.

Examination read over by me to the witness, and subscribed by him and sworn to before me, this 31st day of Oct., 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

The counsel for the complainant further calls as a witness, David P. Bingley, who, being duly sworn, deposes and says as follows, his testimony being taken, by consent, in narrative form:

I am one of the bankrupts. My firm of H. E. Dibblee & Co. was formed on the first day of January, 1866; Henry E. Dibblee, John J. Krauss, and myself composed that firm; Mr. Dibblee, I think, contributed twenty thousand dollars capital—Mr. Krauss and myself nothing. I do not know that Mr. Dibblee did put in that sum in cash. I was told by Mr. Dibblee, at the time the partnership was about forming, that he was to sell his house on Staten Island to raise that amount. He also said that Mr. Adrian Iselin was to put in twenty-five thousand dollars, as special capital, and that if we wanted more, Mr. Iselin would loan the firm fifty thousand dollars more, without any risk in the business as to the latter amount.

85 (The counsel for the defendants Iselin objects to the witness giving testimony as to the declaration of the defendant Dibblee to him, as incompetent and irrelevant.)

The firm's place of business when it started was No. 19 Murray-street and 21 Park place. We were burned out there on the twenty-eighth day of May, 1868, as nearly as I can recollect. Our stock was a total loss by that fire. I do not think that loss was covered by insurance. After the fire, we took an office at No. 31 Park place, up stairs, and had no goods until the last of July, 1868. We moved from there about the seventeenth day of August, 1868, to No. 349 Broadway, which was the store our firm occupied until we failed in May, 1869. On the sixth day of August, 1868, we occupied the office I have spoken of, but we had no goods to sell. The books were not burned. I remember the occasion when the sheriff levied on the goods of Henry E. Dibblee & Co. under an execution in favor of Messrs. Iselin & Co. It was on a Friday; I think the last day of April, 1869. The next day we transferred our notes and accounts to Iselin & Co. to relieve us from the levy under this judgment. We were occupied in making this transfer from six o'clock in the evening of Saturday, May 1, 1869, until nearly twelve o'clock that night. Mr. Iselin was present, with his counsel, most of the time. After they came in, they remained until the transfer was complete. After the transfer was made the sheriff left, by direction of Mr. Iselin's counsel, and we locked up the store. I did not look over the list of securities and accounts given to Mr. Iselin. Since the bankruptcy, I have, at the request of the assignee, gone amongst Henry E. Dibblee & Co.'s debtors in Georgia and Alabama, to collect what I could. I think I collected four or five hundred dollars. Most of the debts down there in Georgia were almost worthless, and in Alabama they were not much better. The largest debts we had in Alabama were in Barbour County, and the debtors had mostly gone into bankruptcy.

86 Cross-examined by counsel for the defendants, Iselin:

Our partnership was formed for one year, and it was a general partnership between Mr. Dibblee, Mr. Krauss, and myself. I understood from Mr. Dibblee that Mr. Iselin was to contribute twenty-five thousand dollars as a special partner at the risk of the business. He was to receive interest on his money at seven per cent., but no share in the profits of the business. We did not deliver to Mr. Iselin on the first day of May, 1869, all our notes and accounts. I think we did transfer about forty-seven thousand dollars in amount. I did not know that the sheriff was in possession of our store until some six hours after he had made

his levy. Then Mr. Dibblee told Mr. Krauss and myself that we would have to stop.

Redirect examination by counsel for the complainant:

Mr. Dibblee never consulted me about the finances of the business.

DAVID P. BINGLEY.

Examination read over to the witness by me, and subscribed and sworn to by him before me this 31st day of October, 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

(The examination is here adjourned to November 1st, 1870, at noon.)

NEW YORK, *November* 1, 1870.

The parties appear, and the examination is proceeded with:

DAVID P. BINGLEY, (recalled by the counsel for the defendants Iselin,) having been heretofore duly sworn, further deposes and says:

87 Q. 1. State what you knew on April 30, 1869, of the financial condition of Messrs. H. E. Dibblee & Co.

A. I knew very little, except that I was led to believe that we were solvent.

Q. 2. What do you mean by you were "led to believe?"

A. From Mr. Dibblee's acts and the circumstance that, a few days before, he directed me to re-engage certain salesmen for the approaching season, I supposed that we were on that day solvent.

Q. 3. Do you know, of your own knowledge, of the solvency of the house being questioned up to that time?

A. I do not.

Q. 4. Did you ever, up to that time, hear it questioned?

A. No, sir.

(Complainant's counsel objected in due time, on the ground of irrelevancy, to the last part of the answer to Question No. 1 from and including the words, "led to believe," and to each of the subsequent questions and answers severally.)

Re examination by counsel for the complainant, the narrative form being resumed by consent:

At the time of the failure, I had drawn more than the articles of copartnership authorized. I had drawn about six thousand dollars per year, when I was only authorized to draw three thousand five hundred. As a general thing, I went to Mr. Dibblee when I wanted more than fifty dollars. On one occasion he said I was drawing too much money, but he never refused to let me have money when I asked for it. I did not know that Mr. Dibblee had, at any time since the firm was formed, drawn out all, or nearly all, the capital he had put in. Mr. Dibblee did not say that I was drawing more than my proportion of the profits of the concern, but that I was drawing more than I agreed to.

88 (Counsel for the defendants, Iselin, objected in due time to the whole of this re-examination of the witness Bingley, on the part of the counsel for the complainant, as being irrelevant, and to each and every part thereof severally on the same grounds.)

DAVID P. BINGLEY.

Examination read over to the witness by me, and by him subscribed and sworn to before me this 1st day of November, 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

The counsel for the complainant further calls, as a witness:

JAMES R. CORDNER, who, being duly sworn, deposes and says as follows, his testimony being taken, by consent, in the narrative form:

On the thirtieth day of April, 1869, and for some years before, and for some months afterwards, I was a member of the firm of Garrett, Clark & Co., who were creditors of H. E. Dibblee & Co. On the thirtieth day of April, 1869, I had two interviews with Mr. Dibblee, one with him alone and the other in presence of Mr. Smith, who was at that time counsel for certain of the creditors. Both interviews were at the store of H. E. Dibblee & Co. At that time the sheriff had possession of the store of H. E. Dibblee & Co., as Mr. Dibblee informed me, under an execution issued in favor of A. Iselin & Co. I stated that I called on behalf of our firm, and introduced Mr. Smith as our counsel. Mr. Dibblee stated to me that some months previously he had received from Mr. Iselin certain bonds amounting to, say, forty or fifty thousand dollars, on which he had raised a loan, and given A. Iselin & Co. a confession of judgment as security. He further said that this was the judgment under which the levy had been made. He also stated that
89 he had applied a few days previously to Mr. Iselin for a further loan, but Mr. Iselin had declined to make it, alleging that he believed it would be better for the interests of the creditors if the firm should now stop. Mr. Dibblee also said that Mr. Iselin deemed it better to demand payment of the loan, and in default of that to issue execution, before the first of May, as the quarter's rent of the store came due that day. Mr. Smith asked Mr. Dibblee, in my presence, to file a voluntary petition in bankruptcy for the purpose of protecting the creditors against the execution, and bringing Mr. Iselin's claim upon the same footing with the other debts of H. E. Dibblee & Co. Mr. Dibblee replied that, when he executed the confession of judgment, he had intended to secure Mr. Iselin, and he would be a disgraced man before God if he should take any such steps. He also stated, in a general way, that Mr. Iselin had been his friend for many years, and that he had been under great obligations to him. In reply to a question as to the amount of the capital originally contributed to his firm, he stated, that he had himself put in twenty thousand dollars, and that Mr. Iselin had loaned them twenty-five thousand dollars for three years, such loan to be at the risk of the business. At that interview Mr. Dibblee stated that, on the first day of January previous, his balance-sheet showed a surplus, but he did not say what that surplus consisted of.

Q. 1. Subsequently to that, and on what day, did you have an interview with Mr. Adrian Iselin? And, if you did, state what took place thereat.

A. I cannot fix the day, but between the time of the filing of the petition in bankruptcy against H. E. Dibblee & Co. and the time of selling their stock by order of the court, I had an interview with Mr. Adrian Iselin, at his banking house. I was accompanied by Mr. Eli Mygatt, j'r, one of the creditors.

The conversation with Mr. Iselin was carried on principally by
90 Mr. Mygatt, who asked Mr. Iselin if, under the circumstances, he would be disposed to make a compromise with the creditors on

behalf of Mr. Dibblee. Mr. Iselin replied that he would be very willing to pay in cash any sum that Mr. Dibblee believed could be realized from the assets, but that he was advised that he had a right to hold the securities received for his loan, and would not entertain any proposition to compromise that matter.

He stated that he had, at different times, loaned Mr. Dibblee's firm large sums of money, and had also bought their paper, and that at the formation of their present firm had loaned them twenty-five thousand dollars, at the risk of the business. He also stated that a few days previously Mr. Dibblee had applied to him for a further loan; that he had caused some investigation to be made of their (H. E. Dibblee & Co.'s) affairs, and had declined, believing that it would be for the interest of the creditors that they should stop then. Some allusion was made by Mr. Iselin to the fact of the rent of Dibblee's store falling due on the first day of May, but I do not exactly remember what he said. This was the substance of the interview.

(Cross examination by counsel for the defendants Iselin waived. But he objected, in due time, to the testimony of this witness, and to each and every part thereof severally, down to Question No. 1, on the ground of its incompetency and irrelevancy, and to the remainder of said testimony, and to each and every part thereof severally, on the ground of its irrelevancy.)

JA'S R. CORDNER.

Examination read over to the witness by me, and by him subscribed and sworn to before me this first day of November, 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

91 (The examination is here adjourned to November 7, 1870, at 3½ p. m.)

NEW YORK, *November* 7, 1870.

The parties appear and the examination is proceeded with.

The counsel for the complaint further calls as a witness Charles Wells, who was duly sworn.

(The examination is here adjourned to November 9, 1870, at 1½ p. m.)

NEW YORK, *November* 9, 1870.

The parties appear, and the examination of Mr. Charles Wells being, by consent of parties, for the present suspended, the counsel for the complainant further calls, as a witness, John J. Krauss, who, being duly sworn, deposes and says as follows, his testimony being taken, by consent, in the narrative form:

I was one of the firm of H. E. Dibblee & Co., the bankrupts. We commenced business on the first day of January, 1866. When the firm was formed, Mr. Dibblee agreed to put in twenty thousand dollars; he also said that Mr. Adrian Iselin was to contribute twenty-five thousand dollars at the risk of the business, and would assist us with fifty thousand dollars more if we needed it. I did not see Mr. Iselin at the time, and he never told me anything about such contribution. The execution of Iselin & Co. was levied on Friday, the last day of April, 1869; but I did not see the sheriff until the following day. I was present
92 on Saturday night, the first day of May, 1869, when a bill of sale was made to A. Iselin & Co. On Saturday morning Mr. Dibblee

proposed to myself and Mr. Bingley that we should sell out the whole stock "in a lump" to whoever would buy it. He did not state any reason for so doing, but said that we should show the stock to any one who should come to buy it. There were only two who came, to the best of my knowledge; one was Mr. L. M. Bates, a merchant of this city, and the other was one of Henry Barbey & Co.'s men; I don't know his name, but I have seen him in their store. Mr. Dibblee showed him the stock. Mr. Bingley and I refused to show it; and I told Dibblee that I would not sell it "in a lump" without taking an inventory, as it was not fair to the creditors. He said he should sell it "in a lump" if he couldn't get more than twenty-five thousand dollars for it. Mr. Bates went through the stock on two floors; Mr. Dibblee went around with him. I don't know how far through the other gentlemen went. I then threatened to put an injunction on Mr. Dibblee, whereupon he said that if we acquiesced in what he and Mr. Iselin were doing it would be better for us, and we would be taken care of; if we did not, we could get nothing, could show nothing, and could prove nothing. Before that I had seen Mr. Iselin at the store, once that week; he merely went into the office to speak to Mr. Dibblee. After that I didn't see him until the Saturday night he came to receive the bill of sale. I can't say what time he came. It was after dark, and he came with his counsel. Before dark Mr. Dibblee requested Mr. Bingley and myself to remain there; he did'nt tell us what for. The book-keeper and Mr. Dibblee were working at the books after Mr. Iselin and his counsel came; they were drawing off the lists of the securities to be delivered to Mr. Iselin, as I afterwards found out. Mr. Clark, Mr. Iselin's counsel, was with Mr. Iselin in the inside office. Sometimes Mr. Dibblee went into the inside office, and
93 sometimes Mr. Clark came out. Mr. Bingley and I were sitting outside among the goods. We could only see that they were working at the books. We could not hear any of the conversation, and did not. After the accounts were drawn off, they called us into the outside office to sign the agreement they had drawn up; that was a bill of sale of these accounts. It was then between twelve and one o'clock Sunday morning, by the clock in the office. That clock I supposed to be right. At that time I either called Bingley's attention, or he called mine, to the fact that it was twelve o'clock. This was before we went into the office. We were not more than a minute or two in the office before we signed the paper. Mr. Dibblee called us into the office. Mr. Iselin and Mr. Clark, his counsel, Mr. Dibblee and Mr. Gates, the book-keeper, were there. When we went inside the office Mr. Dibblee said that by signing this agreement our stock would be released from execution, and asked us to sign it. Upon that understanding Mr. Bingley and I signed it. I did not read it, nor did I hear it read. I did not examine the bill of sale, nor the amounts, nor did I know whether it was an absolute transfer, or merely a transfer to secure Mr. Iselin. I did not hear Mr. Iselin say anything. Before the execution was issued Mr. Dibblee paid my wife some money she had loaned to the firm "on call." This money was paid the day, or the day before, the execution issued. I contributed no capital to the firm, nor did Mr. Bingley.

Cross-examined by the counsel for defendants Iselin:

The time when I threatened to put an injunction on Mr. Dibblee was some time on Saturday. I did not see the sheriff in the store at the time. I saw him there on Saturday morning. When I threatened Mr. Dibblee it was near noon. In the afternoon of that day I saw the sheriff in the store. He was there, also, on that evening. I have known Mr.

Adrian Iselin, by sight, for some ten or twelve years. I did not
94 know him personally. I was introduced to him after the formation of this firm. I never had any conversation with him in reference to business of any kind. On the thirtieth day of April, 1869, before the levy of the execution, I knew nothing of the financial condition of the firm. Up to that time I never heard the solvency of our house questioned, nor had I any reason to suppose that it would suspend. A week or ten days before that, Mr. Dibblee had said to Mr. Bingley and myself that we had a good prospect for the coming season. Up to the thirtieth day of April, 1869, I had no reason to suppose that the house was not perfectly solvent. I attended a meeting of the creditors, at the store, on some day during the following week. Mr. Dibblee made a statement to that meeting of the financial condition of the house. That was the first real statement I had. When Mr. Dibblee told me, on Friday night, April 30, 1869, that there was a sheriff in possession of our stock I was very much surprised. I asked how that could be when there had been no suit. He said that he had confessed judgment in the name of the firm. The amount which I have before said Mr. Dibblee repaid my wife was two thousand dollars in money, and on the following day he handed over to her two thousand dollars in accounts, making four thousand dollars in all. The payment of this money to my wife was one of the grounds upon which we were put into bankruptcy. I do not know that the assignee has ever instituted any proceedings to recover back this amount. I know that he has not done so. I never received any assurance from the assignee, or the creditors, that this amount should not be sought to be recovered by them. I never received any assurance, that I recollect, from any one, nor has my wife, that I know of, that no proceedings should be taken. I have never spoken with the assignee upon the subject. I may have spoken with Mr. Wells.

Redirect examination by the counsel for the complainant:

95 Before I went into business here my wife kept a millinery store in the country. She kept it up to December, 1866, when she sold out, and deposited four thousand dollars with H. E. Dibblee & Co. "on call." When she received this preference she did not know the firm was going to fail, nor had she any notice or information to that effect. She had called for the money several times to buy a small property over in Greenville, New Jersey. The assignee's counsel inquired of me as to her knowledge of the insolvency of the firm, and I told him that she knew nothing of it. I knew, after the execution was issued and before the bill of sale was signed, that the firm would have to go into liquidation. By that I mean that we would have to stop business. We could not buy goods when an execution was on our stock.

Just before the store was closed on Friday evening, Mr. Dibblee requested Mr. Bingley and myself to meet him at the corner of Centre and Franklin streets on our way up. This was on the thirtieth day of April, 1869. We met him as requested, and he told us our stock was in the hands of the sheriff, as I have before stated.

JOHN J. KRAUSS.

Examination read over to the witness by me, and by him subscribed and sworn to before me this 9th day of November, 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

(The examination is here adjourned to November 11th, 1870, at 3 p. m.)

NEW YORK, *November 11th*, 1870.

The parties appear, and the examination is, by consent, adjourned to November 23d, at 1 p. m.

96 NEW YORK, *November 23d*, 1870.

The parties appear, and the examination is proceeded with.

The counsel for the complainant puts in evidence a statement prepared by Charles Wells, hereinabove named, on behalf of the complainant, showing:

First. The amount of the debts of creditors of the bankrupts proved in the bankruptcy, and the dates of the contracting thereof, as stated in the several proofs of debt and on the books of the bankrupts.

Second. The amount of bills and accounts receivable of the bankrupts that are now in the hands of the assignee unpaid, and the times when such indebtedness became due, as appears from the books of the bankrupts.

Third. A statement from the books of the bankrupts, showing their financial condition on the first day of January, 1869, as appears by said books.

Fourth. A statement from said books as to the capital contributed by the respective partners, and the withdrawal thereof; and

Fifth. A statement of the amount realized by the assignee in bankruptcy; which said statement above described is marked "Exhibit No. 10, J. B. M., 23, 11, '70," and is as follows:

Supplemental statement, prepared by Charles Wells.

Amount of claims proven against the estate of H. E. Dibblee & Co., and received by the assignee, all of which have been allowed by the register in bankruptcy, not including any claim of A. Iselin & Co.....				$202,810 72
It appears by the books of H. E. Dibblee & Co. that of the above $202,810.72—				
	$362 10	was contracted for in	Nov., 1868.	
	3,026 65	" "	Jan., 1869.	
	63,357 52	" "	Feb., "	
	114,308 60	" "	March, "	
	24,866 85	" "	April, "	
	$205,951 72			
Deduct	3,141 00			
	$202,810 72			

97 The $3,141.00 deducted is the balance of interest deducted from amount of claims, to make them all due June 2d, 1869, as ordered by the court.

Amount of bills receivable and open accounts due to the estate of H. E. Dibblee & Co., that are now in the hands of the assignee in bankruptcy unpaid.....	$104,735 57

The books of H. E. Dibblee & Co. show that of the above $104,735.57—

There was due in April,	1866.....	$135 17
" " July,	"	572 08

"	" August, "	606 65		
"	" September, "	446 78		
"	" October, "	407 00		
"	" November, "	106 22		
"	" December, "	9,091 98		
				11,365 18
There was due in January, 1867		$9,872 02		
"	" February, "	8,529 23		
"	" March, "	385 62		
"	" April, "	638 48		
"	" May, "	465 01		
"	" June, "	532 97		
"	" July, "	1,444 90		
"	" August, "	4,458 49		
"	" September, "	3,454 97		
"	" October, "	970 35		
"	" November, "	3,389 06		
"	" December, "	11,392 52		
				45,433 62
There was due in January, 1868		$28,195 66		
"	" February, "	7,489 79		
"	" March, "	600 78		
"	" May, "	453 73		
"	" June, "	187 16		
"	" July, "	526 01		
"	" August, "	117 88		
"	" September, "	10 50		
"	" October, "	9 00		
"	" November, "	59 76		
"	" December, "	133 26		
				37,783 53
There was due in January, 1869		$8,160 96		
"	" February, "	917 57		
"	" March, "	737 11		
"	" April, "	118 68		
"	" May, "	12 40		
"	" July, "	64 98		
"	" August, "	41 97		
"	" Sept., "	98 87		
				$10,152 54
				$104,735 57

Of the above $104,735.57, a considerable amount
98 has been discharged in bankruptcy. The expression "there was due," means that said debts became due at the time stated.

It appears by the books of H. E. Dibblee & Co. that the balance to the credit of the profit & loss account, on the 1st of January, 1869, was $67,165.40; which amount nominally represented the capital of the firm. But, to obtain

this balance, there was counted as assets, $32,308.28, standing to the debit of the partners of the firm, as follows:

Henry E. Dibblee	$541 46
David P. Bingley	21,256 99
John J. Krauss	10,509 83
	$32,308 28

And also $5,515.69, standing to the debit of commission account, which, in the aggregate, amounts to the sum of $37,823.97, and no allowance was made for bad debts during the whole time the firm was in business, except $10,505.67 actually compromised and settled.

Between January 20th and June 2nd, 1866, H. E. Dibblee, as shown by the books of the firm, paid into the concern $20,000, as capital, and previous to the 1st of January, 1869, he drew out of the concern $20,541.56, as shown above. Neither of the other partners put in any capital, so far as the books show.

Proceeds of the sale of the stock of merchandise of the firm of H. E. Dibblee & Co., received by the assignee in bankruptcy $55,705 09

Out of the above $55,705.09 there has been paid to the creditors, in dividends, the sum of $50,813.78.

Amount of cash collected from the bills receivable and open accounts which were originally placed in the hands of the assignee in bankruptcy 10,546 86

Of this sum, $10,546.86, a considerable portion was realized by compromising with the debtors.

Amount received by the assignee, in letters directed to the firm of H. E. Dibblee & Co., and which he retained, by advice of counsel, until it is legally settled to whom it belongs 1,897 10

This sum of $1,897.10 is claimed by A. Iselin & Co., under an assignment of H. E. Dibblee & Co., to them made some time since.

It is stipulated between the counsel for the complainant and for the defendants Iselin, that the foregoing statement, "Exhibit No. 10," shall have the same effect as if the matters therein set forth had been duly testified to by the said Charles Wells, as a witness on behalf of the complainant.

And it is further stipulated to admit the said statement from
99 the books of the bankrupts, as competent evidence against the defendants Iselin, waiving the necessity of evidence being given as to the truth of the entries in said books; both counsel, however, reserving the right to give evidence contradicting or explaining such portions thereof as they may be advised.

The counsel for the complainant recalls as a witness, Charles Wells, who, having been heretofore duly sworn, now deposes and says as follows:

Q. 1. Are you able, as an expert, and from the examination of the books of the bankrupts made by you, your statements respecting which have been given in evidence, to testify whether or not the bankrupts were insolvent on the twenty-fifth day of February, 1869?

A. I am.

Q. 2. State whether they were or were not so insolvent, and, if insolvent, to what extent, and for how long a time before the date named they had been insolvent, and give your reasons.

A. They were insolvent at that time. They were insolvent to the extent of at least seventy-five thousand dollars, and they were insolvent to a similar amount on the first day of January, 1869, and on the first day of August, 1868, and for months previous to that. In other words, they were insolvent during all the time subsequent to the time last named. The examination of their books shows that they had a large amount of indebtedness due them which was worthless, or nearly so,

Q. 3. Can you state from such examination, and as an expert, whether after the twenty-fifth day of February, 1869, they sustained any losses which would have rendered them insolvent had they not been so on that day?

A. I can. Their books show that after that time they sustained no losses which would have rendered them insolvent had they not been so on that day.

100 (Cross-examination of the witness is waived by the counsel for the defendants Iselin.)

CHARLES WELLS.

Examination read over to the witness by me, and by him subscribed and sworn to before me this 23d day of Nov., 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

The examination is here adjourned to November 28th, 1870, at 3 p. m.

NEW YORK, *November 28th*, 1870.

The parties appear and the examination is proceeded with:

The counsel for the defendant puts in evidence a bill of sale from Henry E. Dibblee & Co. to A. Iselin & Co., dated the first day of May, 1869. A copy is received by consent, in place of the original, is marked "Exhibit No. 11, J. B. M., 28, 11, '70," and is as follows:

For and in consideration of the sum of forty-three thousand six hundred and forty-nine dollars and fifty-two cents to us in hand paid, the receipt whereof is hereby acknowedged, we do hereby sell, assign, transfer, and set over to Adrian Iselin and Isaac Iselin, composing the firm of A. Iselin & Co., the following-enumerated promissory notes, scrip, and open accounts, now on our books, for their use and benefit.

In witness whereof we have hereunto set our hands and seals, and subscribed our firm-name this first day of May, 1869.

(Signed) H. E. DIBBLEE & CO.

HENRY E. DIBBLEE.
D. P. BINGLEY.
JOHN J. KRAUSS.

101 The schedule following, and forming a part of the above, contains a list of open accounts, promissory notes, and insurance scrip, as follows:

Open accounts	$33,074.50
Notes	12,675.02
Insurance scrip	2,090.00
	$47,839.52

The counsel for the complainant puts in evidence the confession of judgment and the judgment entered thereon, copies of which are set forth in the complainant's bill; also the execution issued on said judgment referred to in said bill, with the sheriff's return and the endorsements theron; a copy of which execution, return, and endorsements is, by consent, received in place of the original, is marked "Exhibit No. 12, J. B. M., 28, 11, '70," and is as follows:

The people of the State of New York, to the sheriff of the city and county of New York, greeting:

Whereas, judgment was rendered on the thirtieth day of April, one thousand eight hundred and sixty-nine, in an action in the supreme court of the State of New York, in and for the city and county of New York, between Adrian Iselin and Isaac Iselin, plaintiffs, and Henry E. Dibblee, David P. Bingley and John J. Krauss, defendants, in favor of the said Adrian Iselin and Isaac Iselin, against the said Henry E. Dibblee, David P. Bingley, and John J. Krauss, for the sum of fifty-four thousand one hundred and five dollars, as appears to us by the judgment-roll, filed in the office of the clerk of the city and county of New York; and whereas the said judgment was docketed in your county on the thirtieth day of April, in the year one thousand eight hundred and sixty-nine, and the sum of fifty-four thousand one hundred and five dollars is now actually due thereon: Therefore, we command you that you satisfy the said judgment out of the personal property of the said judgment debtors within your county; or if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtors on the day when the said transcript was so docketed in your county, or at any time thereafter, in whose hands soever the same may be; and return this execution, within sixty days after its receipt
102 by you, to the clerk of the said court, at the city-hall in the city of New York.

Witness: Hon. Thomas W. Clerke, justice of said court, at the city-hall, in the city of New York, the thirtieth day of April, one thousand eight hundred and sixty-nine.

HENRY W. CLARK,
Plaintiffs' Attorney,
100 *Broadway, New York City.*

(Endorsed:) Supreme court, city and county of New York. Adrian Iselin and Isaac Iselin, against Henry E. Dibblee, David P. Bingley, and John J. Krauss. Execution to the city and county of New York. Henry W. Clark, 100 Broadway.

Sheriff of New York City and County:

Levy and collect $54,105.00, with interest thereon from the day

of 18 , besides your fees, &c., and return this execution within sixty days after the receipt by you to the county clerk's office.

HENRY W. CLARK, *Plff's Att'y.*

(Ryan.) Filed May 4, 1869. Received April 30, 1869, 12.35 p. m. Execution countermanded, satisfied.

HENRY W. CLARK, *Plff's Att'y.*

Countermanded: JAMES O'BRIEN, *Sheriff.*

[$453.10.] - J. O. S.

It is mutually stipulated and consented that either party may refer, on the hearing, to the petition and decree, assignment by register to assignee, and the injunction in the bankruptcy proceeding, and also to the order dated the seventeenth day of July, 1869, and the proceedings thereunder, in said bankruptcy proceeding; all of which are referred to in the complainant's said bill, and in the answer.

The counsel for the complainant thereupon rested his case.

(The examination is here adjourned to Dec. 2, 1870, at 2 p. m.)

103 NEW YORK, *December* 2, 1870.

The parties appear and the examination is proceeded with: The counsel for the defendants Iselin, to sustain the issues upon their part, calls as a witness Charles Wells, who, having been heretofore duly sworn, now further deposes and says, as follows:

Q. 4. You have been called and have testified in this action, as a witness for the complainant?

A. I have.

Q. 5. You have made a thorough examination of the books of H. E. Dibblee & Co.?

A. I have.

Q. 6. Do those books show any discounts of their paper, or of paper held by them, obtained by them from banks or bankers, or from any party or parties, other than those obtained by them from A. Iselin & Co., and from the several banks upon the hypothecations to said banks of the securities delivered to said firm by A. Iselin & Co., and for the value of which the confession of judgment was given; or do those books show that they at any time borrowed money to be used by them in their business, other than from A. Iselin & Co., and from the banks at the time of the said hypothecations, and other than the amount of four thousand dollars or thereabouts, loaned by Mrs. Krauss to the firm, and other than moneys temporarily deposited with them by their customers?

A. My impression is that those books do not show any loans or discounts other than those mentioned in the question; but I will examine the books and ascertain, and answer definitely at the next meeting.

Q. 7. Speaking as an expert, please state whether it is or is not the usual custom of merchants in business similar to that in which H. E. Dibblee & Co. were engaged to procure discounts of their own paper,
or of paper of their customers belonging to them, from time to
104 time in the usual course of their business, and from its usual and ordinary necessities and requirements?

A. I should say that it was.

(The examination of this witness is here suspended, in order to give him an opportunity to make such investigations as would enable him to more fully answer Question No. 6, above propounded.)

The counsel for the defendants Iselin puts in evidence a printed circu-

lar, dated May 23d, 1870, which it is admitted by the counsel for the complainant was sent by the assignee in bankruptcy to the creditors of H. E. Dibblee & Co., at or about the time of its date; which circular is marked "Exhibit No. 13, J. B. M., 2, 12, '70," and is as follows:

United States district court, southern district of New York.

"IN THE MATTER OF HENRY E. DIBBLEE, DAVID P. BINGLEY, AND JOHN J. KRAUSS, BANKRUPTS.

"To JAMES R. CLARK, j'r, assignee:

"We consent that you adjust and pay, with the consent and approbation of Isaiah T. Williams, esq., register in bankruptcy, the amount of legal expenses incurred by Garrett, Clark & Co. in this case, prior and up to the assignment in bankruptcy, and under the several orders of the court prior to that date.

"Dated NEW YORK, *May* 23, 1870.

"

"*Creditors.*

"142 DUANE STREET,
"*New York, May 22d*, 1870.

"To the Creditors of H. E. Dibblee & Co.:

"I take occasion, in consequence of several personal applica-
105 tions for information, to report to the creditors that it is expected that the suit brought by me against Messrs. Iselin & Co., to recover moneys alleged to have been paid to them by Dibblee Co., in preference to other creditors, contrary to the bankrupt law, will be ready for a hearing before the court at the October or November term. The case involves over $150,000.

"Mr. Charles H. Smith, my counsel, 243 Broadway, will give any further information, and requests any one able to testify to facts bearing on the case, to communicate the same to him without delay. Anything tending to show that on and after February 25, 1869, Mr. Dibblee knew, or contemplated his house would have to stop payment on their then existing debts, and that Iselin & Co. had reasonable cause so to believe, will be pertinent.

"The taking of testimony is now in progress before the examiner of the United States court, and as soon as he reports, the case can be brought to a hearing.

"I have also to say that the court has made an order directing register Isaiah T. Williams to take proof and report as to the proper amount to be paid out of the estate, for expenses incurred by Garrett, Clark & Co., who filed the petition in bankruptcy, for legal services prior and up to the appointment of the assignee in bankruptcy, and to give personal notice to all creditors.

"To avoid the expense of this proceeding, I propose that you sign and return to me the annexed consent, which if signed by all creditors, will enable me to adjust the matter with the approbation of the register.

"Yours, respectfully,

"JAMES R. CLARK, J'R,
"*Assignee.*"

The counsel for the defendants Iselin further puts in evidence three letters addressed by A. Iselin & Co. to H. E. Dibblee & Co., copies of

which are marked as follows: the first, dated September 17th, 1868, is marked "Exhibit No. 14, J. B. M., 2, 12, '70," and is as follows:

NEW YORK, *Sept.* 17, 1868.

Messrs. H. E. DIBBLEE & Co.

GENTLEMEN: We are in receipt of your favor of August 31st, inclosing the following notes:

106	No. 1230 D. M. Wilson,	due Dec. 27, '68.....	$1,066	33
	" 1232 Renssou & Grayard,	" " 28, '68.....	687	09
	"'1235 R. Hoffman,	" " 29, '68.....	461	96
	" 1238 McCourts, Rogers & Co.,	" " 28, '68.....	622	91
	" 1241 W'm Horn,	" " 27, '68.....	484	61
	" 1229 J. B. Dibell & Son,	" Feb. 21, '69.....	511	11
	" 1222 C. B. Maynard,	" " 16, '69.....	618	51
			$4,652	52

Which we beg to return you herewith, to collect for our account, being in exchange of $4,358.26 of notes withdrawn by you from our collaterals.

Yours, truly,
(Signed) A. ISELIN & CO.

The second, dated January 18th, 1869, is marked "Exhibit No. 15, J. B. M., 2, 12, '70," and is as follows:

NEW YORK, *Jan.* 18, 1869.

Messrs. H. E. DIBBLEE & Co.,
Present.

GENTS: In answer to your note of this day we beg to hand you for collection for our account, $2,474.75, 6 notes. Your note No. 1463, A. Miles, was never in our possession; we will hand you to-morrow the balance of collaterals, so as you may collect them as they fall due.

Yours, truly,
(Signed) A. ISELIN & CO.

And the third, dated January 19th, 1869, is marked "Exhibit No. 16, J. B. M., 2, 12, '70," and is as follows:

NEW YORK, *Jan*, 19, 1869.

Messrs. HENRY E. DIBBLEE & Co.,
Present.

DR. SIR: Enclosed please find $14,464.98, 41 notes, which we hold as collaterals, and which you will please collect for our account.

Very truly, yours,
(Signed) A. ISELIN & CO.

All of which three exhibits, Nos. 14, 15, and 16, are admitted by the counsel for the complainant to be true copies of original letters, addressed as above stated, and sent to H. E. Dibblee & Co., at
107 their respective dates, and which copies are by consent, received with like effect as if the originals were produced and marked as exhibits.

The counsel for the defendants Iselin further calls as a witness:

MAURICE HANDSCHIN, who, being duly sworn, deposes and says as follows, his testimony being by consent taken in the narrative form:

I am the book-keeper of A. Iselin & Co., and have been such since

December, 1865. A. Iselin & Co. are engaged in the business of bankers. ("Exhibit No. 2" is shown to witness.) I made this exhibit, and it is in my handwriting. It is a true abstract from the books of A. Iselin & Co., so far as the same relate to the matters of account, stated in this exhibit. I know, of my own knowledge, of the truth of the entries therein referred to.

Q. 1. Were, or were not, the securities stated in this account ("Exhibit No. 2,") to have been given on the sixth day of August, 1868, by H. E. Dibblee & Co., to A. Iselin & Co., as collateral for the notes of H. E. Dibblee & Co. discounted by A. Iselin & Co., so actually delivered by H. E. Dibblee & Co. to A. Iselin & Co.?

A. On the sixth day of August, 1868, Mr. Dibblee called at Mr. Iselin's office and had an interview with him in his private office. After Mr. Dibblee left, Mr. Iselin came into the general office and handed me three bundles of securities, accompanied by four lists, together containing a description of the securities, in the handwriting of H. E. Dibblee & Co.'s book-keeper. Mr. Iselin requested me to examine and compare those securities with the lists, giving at the same time orders to return these collateral securities to H. E. Dibblee & Co. for collection and replacement; and also remarking that it would be too troublesome for us to make the exchanges in our own office. There were in all one hundred and forty-seven notes, which, according to Mr. Iselin's instructions,
108 were returned to H. E. Dibblee & Co. Previous to such return I myself made a list describing the notes, in a special book, so as to mark the exchanges. After having made out my list I compared it with the lists received from H. E. Dibblee & Co., and it proved to be correct. My list was made from the notes themselves. The notes were returned on the following day, the seventh day of August, 1868, with the original letter now shown me, marked "Exhibit No. 7, J. B. M., 20, 10, '70." This letter was not delivered until the seventh day of August, 1868.

Q. 2. State what further took place in the office at the time when these securities were handed to you by Mr. Iselin, and what further orders or instructions, if any, were given by him at the time, in relation to this transaction.

(Objected to as irrelevant and incompetent unless Mr. Dibblee be proved to have been present.)

A. I put the securities into three separate envelopes, each of which contained the securities applicable to one of the notes discounted, as set forth in "Exhibit No. 2," and was endorsed with a memorandum of its contents, and a reference to the note to which the securities related; I then placed all three of these envelopes in a larger one, and endorsed that with a memorandum abstract of the endorsements upon the three smaller envelopes enclosed with an additional memorandum that the margin was eighteen per cent. Mr. Iselin thereupon gave orders to see that the transaction was always kept in the same shape, and that the exchanges were properly made, By "exchanges" I mean that whenever H. E. Dibblee & Co. should collect any of the securities so placed in our hands, they were to replace the security so collected and withdrawn by the exchange of another, of at least an equal amount; I so understood it at the time.

(The examination is here adjourned to December 9th, 1870, at 2 p. m.)

109 NEW YORK, *December* 9, 1870.

The parties appear, and the examination is proceeded with.

The counsel for the defendants Iselin recalls, as a witness, Charles

Wells, who, having been heretofore duly sworn, and in part examined at the last meeting, now further deposes and says, (the examination of the witness, Maurice Handschin, now on the stand, being, by consent of counsel, for the present suspended,) as follows:

Q. 8. Are you now prepared to, and will you give a more definite answer to Question No. 6, of your examination of December 2d, 1870?

A. Yes, sir.

Q. 9. Please do so. (The counsel for the defendants Iselin rereads Question No. 6 above propounded by him.)

A. I have examined the books of H. E. Dibblee & Co., in order to answer definitely this question. I find that their borrowed-money account was kept upon the cash-book of the firm until the fifteenth day of August, 1868. Previous to that date there were three items which apparently were not moneys left with them by their customers. These items are (first) a loan by Charles L. Rabitte, on the twenty-eighth day of August, 1866, of six thousand dollars; (second) a loan by W. D. Cress, on the twelfth day of September, 1866, of four thousand and fifty dollars; and (third) their note, No. 480, dated the fifteenth day of May, 1867, for two thousand and thirty-three dollars and sixty cents, discounted for them by Watt & Sherman on the 17th day of May, 1867. These loans were paid shortly after they were made, and the note was paid at maturity. Mr. H. E. Dibblee informed me that, after August 15th, 1868, their borrowed-money account was kept in a small book provided for the purpose. I asked Mr. Dibblee for that book some time in July or August, 1869, shortly after the appointment of the as-
110 signee, and he answered that he did not know where it was.

Aside from these loans and this discount, mentioned above, I do not find upon the books of H. E. Dibblee & Co., which have come into the possession of the assignee, any evidence that they obtained any loans from parties other than those mentioned in the question.

Q. 10. How do these loans and the discount, which you have enumerated, appear not to have been moneys left with H. E. Dibblee & Co. by their customers?

A. The parties named do not appear upon their books as purchasers of goods from the firm.

Q. 11. Do the books show the residence of either of those three parties?

A. They do not; but I know where two of them reside.

Q. 12. Please say where these two parties reside.

A. Watt & Sherman and Charles L. Rabitte do business in the city of New York.

Q. 13. How soon after these loans and this discount were made, were the loans repaid and the note discounted taken up?

A. The loans were paid within a month of their being made, and the note was taken up in August, 1868.

Q. 14. Do the books of H. E. Dibblee & Co. show any sales of goods to them by the firm of Henry Barbey & Co., in the city of New York; and, if so, please state the amount of such sales unpaid for at the time that H. E. Dibblee & Co. were adjudged bankrupts, the terms upon which such sales were made, and the date of the last of such sales.

(The counsel for the complainant objects to the question as irrelevant and incompetent. The counsel for the defendants Iselin states that he expects to prove the formation, under the statute, and the existence, at the time of the sales referred to in the question, of a limited partnership under the firm-name of Henry Barbey & Co., in which Mr. Adrian Iselin was, at such times, ever since has been, and still is, a special part-

ner. The counsel for the complainant admits the fact to be
111 as stated in respect to such partnership, but insists on his objection to the question.)

A. The books of H. E. Dibblee & Co. show large sales of goods to them by Henry Barbey & Co. ever since February, 1866. The amount due Henry Barbey & Co. at the time H. E. Dibblee & Co. were declared bankrupts, was eight thousand three hundred and fifty-one dollars and sixty-one cents. The goods were all sold upon a credit of six months. The last sale by Henry Barbey & Co. to H. E. Dibblee & Co. was on the thirteenth day of April, 1869, and the amount of such sale was twenty-seven dollars and twenty-two cents.

Q. 15. Do the books of H. E. Dibblee & Co. show the payment or allowance of any sum or sums, in any manner or shape, by H. E. Dibblee & Co., or by any member of that firm, to A. Iselin & Co., or to Adrian or Isaac Iselin, beyond interest, at the rate of seven per cent. per annum, for any loans or discounts, at any time made by A. Iselin & Co., or by Adrian or Isaac Iselin, to such firm of H. E. Dibblee & Co., or do such books show the payment or allowance, by H. E. Dibblee & Co., or by any member of that firm, to A. Iselin & Co., or to Adrian or Isaac Iselin, of any commission, or any sum or sums of money, in any manner or shape, for the loan of the securities by A. Iselin & Co. to H. E. Dibblee & Co., which were hypothecated to the banks, as referred to in Question No. 6 of this, your examination?

A. The books of H. E. Dibblee & Co., which have come into the possession of the assignee, do not show that any extra interest or commissions were paid to A. Iselin & Co., or to Adrian or Isaac Iselin, unless the sum of six thousand nine hundred and forty-four dollars and eighty-eight cents, credited to A. Iselin & Co. on the eighth day of April, 1869, on the books of H. E. Dibblee & Co., is composed of such extra
112 interest or commission. The said sum is credited to A. Iselin & Co. in the journal of the firm of H. E. Dibblee & Co., at folio 185, as follows:

"Interest to A. Iselin & Co., as per ac't (266) balc., $6,944.88."

I asked Mr. H. E. Dibblee if there was not a book of the firm in which accounts current, when rendered, were copied, and I think he answered that his firm kept no such book.

The examination is here adjourned to December 15, 1870, at 2 p. m.

NEW YORK, *December* 15, 1870.

The parties appear and the examination is further adjourned to December 19th, 1870, at 2 p. m.

NEW YORK, *December* 19, 1870.

The parties appear and the examination is proceeded with.

The counsel for the defendants Iselin, recalls Charles Wells, who, having been heretofore duly sworn, further deposes and says as follows:

Q. 16. Please state whether there is any entry on the books of H. E. Dibblee & Co., of interest paid A. Iselin & Co. other than the item of six thousand nine hundred and forty-four dollars and eighty-eight cents, referred to in your answer to Question No. 15.

A. There is no other credit of interest to A. Iselin & Co., or to Adrian or Isaac Iselin, or to either of them, except a credit of interest on the twenty-five thousand dollar loan by Mr. Adrian Iselin.

113 Q. 17. Have you calculated the interest on the loans by A. Iselin & Co., to H. E. Dibble & Co., referred to in question No.

15, from the times at which they were made, to the eighth day of April, 1869?

A. I have not.

Q. 18. Can you ascertain what the item of six thousand nine hundred and forty-four dollars and eighty-eight cents, represents on the books of H. E. Dibble & Co., and be prepared to answer at the next meeting?

A. I will endeavor to do so.

(The examination is here adjourned to December 21, 1870, at 2 p. m.)

NEW YORK, *December* 21, 1870.

The parties appear, and the examination is further adjourned to December 23, 1870. at 2 p. m.

NEW YORK, *December* 23, 1870.

The parties appear, and the examination is proceeded with:

The counsel for the defendants Iselin recalls Charles Wells, who, having been heretofore duly sworn, further deposes and says as follows:

Q. 19. Have you made the calculation of interest called for by Question No. 17 of your last examination?

A. I have.

Q. 20. Is the amount of six thousand nine hundred and forty-four dollars and eighty-eight cents, referred to in Question No. 16 of your last examination, in excess of interest, at the rate of seven per cent. per annum, upon the loans referred to in Question No. 17 thereof?

114 A. I have made the calculation of interest upon those loans at the rate of seven per cent. per annum, and I find the balance of interest from the date of the loans to the eighth day of April, 1869, amounts to six thousand four hundred and seventy dollars and eighty-three cents.

Q. 21. If interest on these loans from their date to April 8th, 1869, were calculated at seven per cent., with three hundred and sixty days in the year, balancing the account every six months and carrying on the balance anew with interest, what would the interest amount to for the time named?

A. I have not made that calculation; but I have no doubt that the interest so computed would amount to at least the sum of six thousand nine hundred and forty-four dollars and eighty-eight cents.

Cross-examination by counsel for the complainant:

Q. 22. Can you state whether Henry Barbey & Co., named in Question No. 14, had been, during the year 1869, creditors of the bankrupts to a larger amount than the sum named in your answer to said question, and to what amount, and whether, and at what times, such indebtedness was paid?

(Objected to by the counsel for the defendants, Iselin as incompetent, irrelevant, and impertinent.)

A. On the 17th day of February, 1869, H. E. Dibblee & Co. owed Henry Barbey & Co. the sum of seventeen thousand three hundred and seventy-four dollars and sixty-eight cents, which became due, and was partially paid as follows:

Feb'y	18th,	1869.	Note	$2,704 80
"	23d,	"	"	1,812 70
"	27th,	"	"	1,970 14
March	4th,	"	"	1,965 71
"	7th,	"	"	2,661 41

"	11th,	"	"	1,887 69
"	22d,	"	"	1,975 64
April	2d,	"	"	1,235 52

115 All the above-described notes were paid at their maturity, the dates above specified; the following fell due at the date specified and were not paid:

May 5th, 1869.	Note	$362 10
Aug.	1869. Open account	798 97

Q. 23. Are you able as an expert, and from what you know of the course of business followed by the bankrupts, by examining their books, to state whether or not the transfer of the securities by the bankrupts to A. Iselin & Co., in April, 1869, to which you have testified, or which are mentioned in the exhibits which you have produced, were transactions in the ordinary course of the business of said bankrupts?

A. I am able so to state; I think those transactions were not in the ordinary course of the business of the bankrupts.

Redirect examination by the counsel for the defendants Iselin:

Q. 24. Can you give the dates of the several notes mentioned in your answer to Question No. 22, and for what such notes were given?

A. The dates of the notes I cannot give; but they were all on six months' time, and were given for goods purchased by H. E. Dibblee & Co. from Henry Barbey & Co., at or about the dates of the notes.

Q. 25. Were these notes paid at or before their maturity?

A. All that were paid were paid at their maturity.

Q. 26. Can you state what amount of indebtedness of H. E. Dibblee & Co. to Henry Barbey & Co. was proved in bankruptcy?

A. I can; it was eight thousand three hundred and fifty-one dollars and sixty-two cents.

Q. 27. Were the two items mentioned in your answer to Question No. 22, consisting of a note for three hundred and sixty-two dollars and ten cents, and an open account for seven hundred and ninety-eight dollars and ninety-seven cents, a portion of this debt that was proved in bankruptcy?

116 A. Yes, sir, they were.

Q. 28. In what respects were the transfers of the securities by the bankrupts to A. Iselin & Co., in April, 1869, transactions not in the ordinary course of the business of the bankrupts?

A. I should say that it was very unusual for parties in the dry-goods jobbing-trade to make loans of parties in the manner they did; that is to say, to borrow money from bankers or others on securities which they kept in their own possession.

Q. 29. Did the bankrupts keep these securities in their own possession?

A. Their books show that they did not so keep the securities given to A. Iselin & Co., on and after the fifth day of April, 1869, but all the collaterals given by H. E. Dibblee & Co., to A. Iselin & Co., prior to that time, the books of the former show were held by them, i. e., H. E. Dibblee & Co.

Q. 30. Do you mean to say that none of the securities given to A. Iselin & Co. by H. E. Dibblee & Co., previous to April 1869, were actually delivered by H. E. Dibblee & Co. to A. Iselin & Co.?

A. The books do not show any delivery of such securities to A. Iselin & Co., and I have no knowledge outside of the books.

Q. 31. Do you know whether or not such securities were delivered by H. E. Dibblee & Co. to A. Iselin & Co.?

A. I do not.

(The examination is here adjourned to December 30th, 1870, at 2 p. m.)

NEW YORK, *December 30th*, 1870.

The parties appear, and the examination is proceeded with:

117 The witness, Charles Wells, now on the stand, states that he desires to more fully answer Question No. 28 of his last examination, and being allowed to do so, further deposes and says, as follows: The delivery on the fifth day of April, 1869, to A. Iselin & Co. by H. E. Dibblee & Co. when in a bankrupt condition, of a large amount of securities, the avails of recent sales, in security for loans of long standing, was not an ordinary business transaction; on the contrary I should say that it was quite unusual, as I consider those loans were at that time wholly unsecured.

CHARLES WELLS.

Examination read over to the witness by me, and by him subscribed and sworn to before me, this 30th day of December, 1870.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

The counsel for the defendants Iselin recalls Maurice Handschin, who having been duly sworn, and in part examined, on the second day of December, 1870, now further deposes and says as follows:

I desire to say as a further and more complete answer to Question No. 1, in my previous examination, that all of the securities stated in Exhibit No. 2, to have been delivered to A. Iselin & Co., on the sixth day of August, 1868, were then actually delivered to A. Iselin & Co. by H. E. Dibblee & Co., with the exception of certain of them enumerated in the lists accompanying the securities, and amounting in the aggregate to ten thousand five hundred and fifty-two dollars and forty-seven cents, which were stated to be in the hands of George Butler & Co., bankers, of Galveston, Texas, for collection. Of these last-mentioned securities eight thousand one hundred and ninety-six dollars and forty-eight cents

118 in amount were pledged to A. Iselin & Co. as security for the note of eight thousand dollars, discounted by A. Iselin & Co., and subsequently taken up by H. E. Dibblee & Co., as stated in "Exhibit No. 2," and were enumerated in the list accompanying that note; and two thousand three hundred and fifty-five dollars and ninety-nine cents in amount were so pledged to A. Iselin & Co. as part of the security for the note of fifteen thousand dollars, discounted as stated in "Exhibit No. 2," and were enumerated in the list accompanying that note.

Q. 3. Do the books of A. Iselin & Co., show the payment or allowance to them, or to either Adrian or Isaac Iselin, of any sum or sums of money in any manner or shape by H. E. Dibblee & Co., or by any member of that firm, beyond interest at the rate of seven per cent. per annum, for any loans or discounts at any time made by A. Iselin & Co., or by either Adrian or Isaac Iselin, to such firm of H. E. Dibblee & Co.; or do such books show the payment or allowance by H. E. Dibblee & Co., or by any member of that firm to A. Iselin & Co., or to either Adrian or Isaac Iselin, of any commission or of any sum or sums of money, in any man-

ner or shape, for the loan of the securities by A. Iselin & Co. to H. E. Dibblee & Co. in the month of February, 1869?

A. I answer, no.

Q. 4. Do you know whether or not A. Iselin & Co. held the notes of H. E. Dibblee & Co., at various times, which had been purchased by them in open market?

A. Yes, they did.

Q. 5. Do the books of A. Iselin & Co. show any sales by them of any of H. E. Dibblee & Co.'s notes subsequent to the first day of January, 1869?

A. They do not.

Q. 6. The bill of sale of May 1st, 1869, executed by H. E. Dibblee & Co., to A. Iselin & Co., is in your keeping as book-keeper of A. Iselin & Co., is it not?

A. It is.

119 Q. 7. Has it so been in your keeping since the first day of May, 1869?

A. It has.

Q. 8. Can you state the nominal value of the securities transferred by that bill of sale?

A. I can; they amounted to forty-seven thousand eight hundred and thirty-nine dollars and fifty-two cents.

Q. 9. Can you state what amount has been collected on these securities by A. Iselin & Co.?

A. I can; it is thirty-seven thousand seven hundred and thirty-eight dollars and sixty-two cents, up to this date.

Q. 19. What amount still remains uncollected on these securities?

A. Ten thousand one hundred dollars and ninety cents.

Cross-examined by the counsel for the complainant:

Q. 11. Is the amount last named good, doubtful, or bad?

A. I think some of the paper is good, some doubtful, and some very bad; but I think the greater portion of it is bad—uncollectable.

Q. 12. Do you know what was the consideration of the bill of sale you speak of?

A. Yes; Mr. Iselin took it in payment of forty-three thousand six hundred and forty-nine dollars and fifty-two cents, being a part of the judgment A. Iselin & Co. held against H. E. Dibblee & Co.

Q. 13. If the whole forty-seven thousand eight hundred and thirty-nine dollars and fifty-two cents had been paid, A. Iselin & Co. would have received four thousand one hundred and ninety dollars more than their debt, would they not?

A. They would, not counting the interest.

Q. 14. Were you present when the bill of sale was made?

A. I was not.

Q. 15. Do you know why it was that H. E. Dibblee & Co. gave

120 A. Iselin & Co. more securities in nominal value, by four thousand one hundred and ninety dollars, than the debt in payment of which the securities were given?

A. I do not know positively; but I suppose that H. E. Dibblee & Co. gave more securities than the amount of the debt because in a certain amount of notes there are always some bad and doubtful ones. This supposition is not derived from anything Mr. Iselin has told me.

Q. 16. Do you know of any agreement or understanding between H. E. Dibblee & Co. and A. Iselin & Co., that the latter should return any surplus, if there should be any, after payment of the debt?

A. I do not; I never heard Mr. Iselin mention the subject.

Q. 17. Did some of the securities mentioned in the bill of sale consist of open accounts and the rest of promissory notes?

A. Yes, sir, they did.

Q. 18. On what day was that bill of sale first placed in your hands?

A. I think on the morning of the third day of May, 1869.

Q. 19. Was it accompanied by the original promissory notes therein mentioned, and statements of the accounts therein mentioned?

A. I think it was.

Q. 20. In what shape were those statements of account; were they statements containing full particulars of the items, or were they merely ledger statements?

A. I think they were ledger statements, giving name and residence of debtor on each, with dates and amounts, and no other details. At the foot of each statement was an assignment, signed by H. E. Dibblee & Co. to A. Iselin & Co., of the account.

Q. 21. Are you sure that every such statement of account had such an assignment at the foot of it at the time the bill of sale was handed
121 to you on the morning of the third day of May, 1869, and that none of such assignments were afterwards signed by H. E. Dibblee & Co.?

A. I am sure they were all signed when I received the bill of sale.

Q. Did you procure afterwards fuller statements of those accounts?

A. No, we did not, except in those instances in which we had to sue the debtors.

Q. 23. How many accounts did you have to sue, and from whom did you procure those fuller statements?

A. I do not recollect the exact number, but I think that there were as many as a dozen; and the itemized accounts were furnished by Mr. Henry E. Dibblee, in the latter part of 1869 and the beginning of 1870.

Q. 24th. On receiving that bill of sale did you write to debtors in the accounts, informing them of the transfers thereof to Messrs. A. Iselin & Co., and notifying them to pay accordingly?

A. Yes, we did; we sent them printed circulars.

(The examination is here adjourned to January 6th, 1871, at 2 p. m.)

NEW YORK, *January 6th*, 1871.

The parties appear and the examination is further adjourned to January 7th, 1871, at 2 p. m.

NEW YORK, *January 7th*, 1871.

The parties appear and the examination is proceeded with.

The counsel for the complainant recalls as a witness Maurice Handschin, who having been heretofore duly sworn, further deposes and says, as follows: I desire to correct some portions of my testi-
122 mony given at the last meeting in answer to questions in my cross-examination; such questions were answered by me entirely from memory, and having since the last meeting found, by an examination of the books and papers of A. Iselin & Co. in my charge as their book-keeper, relating to their transactions with the firm of H. E. Dibblee & Co., that my recollection has been at fault in some particulars, I desire to make the proper corrections. In answer to Question No. 20, I should have stated that there were no ledger statements separate from the bill of sale, nor any statements other than those contained in the schedule attached to and forming a part of the bill of sale, which state-

ment gave in each instance the date of contracting the debt, its maturity, name and residence of the debtor, and amount of the debt.

In answering both questions, No. 20 and No. 21, from memory, as I did, I had in mind the manner in which the accounts given as collateral security for loans made by A. Iselin & Co. to H. E. Dibblee & Co., other than those which were secured by the confession of judgment, were arranged.

Cross-examination resumed by counsel for the complainant:

Q. 25. On what loans other than those secured by the confession of judgment did the collaterals consist of accounts?

A. On the four notes enumerated in "Exhibit No. 2" some of the collaterals given in April, 1869, in exchange for former collaterals, were open accounts.

(The counsel for the complainant objects to the words, "in exchange for former collaterals," as not responsive to his question. The examiner being requested to rule upon the above objection, expresses his opinion that the words objected to are not responsive. The counsel for the defendants Iselin insists upon the same being retained, and the examiner decides that they must be retained for the decision of the court.)

123 Q. 26. In whose possession were the collaterals, of which you say the collaterals given in 1869 were given in exchange, at the time such collaterals given in April, 1869, were so given?

A. In the possession of H. E. Dibblee & Co.

Q. 27. Don't you know that a large part of those collaterals mentioned in your last answer had been before that time collected by H. E. Dibblee & Co., and the proceeds used by them in their business?

A. I do not know it.

Q. 28. Do you know anything going to show it?

A. I do not.

Q. 29. In the original statement marked "Exhibit No. 2," prepared by you, you state at the end, "All these notes were reported collected up to April 5th, 1869, and replaced by new notes and open accounts, amounting to $62,027.34." Did Mr. Adrian Iselin authorize you to put that statement in said paper?

(When the witness was about to answer this question the counsel for the complainant announced that he withdrew the same, and waived the answer for the present.)

The examination is here adjourned to January 10th, 1871, at 2 p. m.

NEW YORK, *January* 10*th*, 1871.

The parties appear and the examination is, by consent, further adjourned to January 18th, 1871, at 2 p. m.

NEW YORK, *January* 18*th*, 1871.

The parties appear and the examination is proceeded with.

124 The counsel for the complainant resumes his cross-examination of Maurice Handschin, who, having been heretofore duly sworn, further deposes and says, as follows:

Q. 30. When, for the first time, did any part of the collaterals delivered by H. E. Dibblee & Co. to A. Iselin & Co. consist of accounts instead of notes?

A. Those which I mentioned in answer to Question No. 25.

Q. 31. How long have you been engaged in the banking business, as book-keeper or otherwise?

A. Five years in Europe, and afterwards five years, and up to this

time, in this country; ten years in all. When I first came to this country I was one month with Messrs. Duncan, Sherman & Co., and ever since that time I have been with A. Iselin & Co.

Q. 32. Describe the general manner of doing business by A. Iselin & Co. while you have been with them.

A. They received no deposits as a general rule; they discounted notes or made advances on collateral securities and drew foreign exchange. They purchased notes in the open market of brokers, and discounted notes for parties who applied to them for discounts of notes made by the applicants or held by them. It was not usual for them to purchase or discount accounts.

Q. 33. Was the receipt from H. E. Dibblee & Co., of accounts as collateral, an exceptional transaction in the ordinary business of A. Iselin & Co.?

A. The only instances in which A. Iselin & Co. have taken collateral security in the form of accounts, if I remember correctly, are those in which they were so taken from H. E. Dibblee & Co.

Q. 34. Referring you to Question No. 4, state when A. Iselin & Co. first commenced purchasing the notes of H. E. Dibblee in the open market, and when they ceased to do so.

125 A. I think it was in 1866; and they ceased purchasing in January, 1869.

Q. 35. Can you state the amount of notes made by H. E. Dibblee & Co., which A. Iselin & Co. purchased from brokers in the open market for each month, after and including January, 1868?

A. I produce a written statement made by me from the books of A. Iselin & Co., which answers the question.

This statement is offered in evidence, is marked "Exhibit No. 17, J. B. M., 18, 1, '71," and is as follows:

Notes of H. E. Dibblee & Co. bought in the open market since January 1, 1868.

$4,511 36	during	January, 1868.	
	"	February, "	we bought no notes in February.
	"	March, "	do do March.
1,696 34	"	April, "	
1,760 75	"	May, "	
	"	June, "	no notes purchased in June.
	"	July, "	do do July.
478 50	"	August, "	
23,713 94	"	September, "	
22,737 36	"	October, "	
16,109 22	"	November, "	
16,691 44	"	December, "	
2,074 98	"	January, 1869.	
$89,773 89			

Q. 36. Did you, or any other person employed by A. Iselin & Co. other than the principals themselves, have any general instructions to buy any such notes from time to time as they should be offered for sale?

A. When the brokers' boys came to offer notes for sale to A. Iselin & Co., the list was generally submitted to Mr. Adrian Iselin, and he gave directions whether to purchase or not. This was always the case, un-

less Mr. John E. Iselin, who held a power of attorney, took it upon himself to make a purchase.

Q. 37. Were you sometimes instructed that if such or such a note of H. E. Dibblee & Co. should be presented, that you should cash it?

A. I do not remember it.

126 Q. 38. Was there a time, and when, for the first time, that notes of H. E. Dibblee & Co. were presented for sale to A. Iselin & Co., that they refused to purchase?

A. I think we rejected almost all offers of notes in December, 1868, and in the beginning of 1869; because they (A. Iselin & Co.) had no money left for such purposes.

Q. 39. How do you know they had no money left for such purposes?

A. Because they had been called upon to make heavy remittances to Europe, and Mr. Adrian Iselin had given orders in the office not to bother him with any offers of notes for sale or discount. This applied to all notes.

Q. 40. When did he give these instructions, and how long did they last?

A. I think in December, 1868, and I do not remember his having countermanded those instructions. They have bought very little mercantile paper since. The instructions I have mentioned as given by Mr. Adrian Iselin were, that we should say to all persons offering notes for sale or discount, that we were not purchasing any mercantile notes.

Q. 41. Did you cease buying notes altogether in pursuance of those instructions, and for how long?

A. They still bought a few notes of H. E. Dibblee & Co. in January, as mentioned in "Exhibit No. 17," and have bought or discounted but few notes since.

Q. 42. What time in December were those instructions given?

A. I do not remember it clearly, but I think it was in the latter part.

Q. 43. Do you remember whether any of the notes stated in "Exhibit No. 17," as bought in December, were bought after the giving of those instructions?

A. I think there were some.

Q. 44. In giving those instructions did Mr. Iselin make any exception of notes made by H. E. Dibblee & Co.?

A. No; he did not.

127 Q. 45. Did he, after giving the instructions, say anything further to you in pursuance of which you communicated to him any application to buy the notes mentioned in your answer to Question No. 43?

A. He did not; he bought those notes himself. They were offered by the brokers directly to him.

Q. 46. Did you hear Mr. Iselin say anything at any time, in or after December, 1868, to the effect that he was not going to buy any more of H. E. Dibblee & Co.'s notes?

A. Yes; when he gave instructions to discontinue purchasing any notes, to the best of my recollection he said to stop also the purchasing of notes made by H. E. Dibblee & Co.

Q. 47. Did he especially mention H. E. Dibblee & Co.'s notes?

A. Yes.

Q. 48. Did he especially mention any others?

A. No.

Q. 49. When notes of H. E. Dibblee & Co. were presented for sale, in December, 1868, did you sometimes reject them, and sometimes purchase them?

A. I and the other employees rejected the offers after having received the above-referred to instructions; but Mr. Iselin bought some himself. Before receiving the instructions, we rejected some where the price didn't suit; sometimes they were offered at a smaller discount by one broker than that at which we could buy them of another. This applies to all offers of paper.

Q. 50. After A. Iselin & Co. gave the instructions you speak of, did the brokers continue to offer notes of H. E. Dibblee & Co. for sale, and for how long?

A. They continued offering the notes, but I cannot say for how long.

Q. 51. Do you remember any offers in February, March, and April, 1869?

128 A. There may have been some in each of those months, but I do not remember them distinctly.

Q. 52. Do you remember the rates at which they were offered after A. Iselin & Co. ceased purchasing?

A. I do not, in any instance.

Q. 53. Was there any person in the office besides you and Mr. John E. Iselin, to whom such applications were made by brokers?

A. Yes; Mr. Adrian Iselin, junior; and the applications were sometimes handed to my assistant, John Kean.

Q. 54. Were there any banks or bankers, other than A. Iselin & Co., who would buy the notes of H. E. Dibblee & Co., in the market, in January, 1869?

A. I do not know, with regard to this, or any previous months.

Q. 55. Name all the brokers, other than those mentioned in the Schedule A, annexed to the answer, who were in the habit of offering notes of H. E. Dibblee & Co. to A. Iselin & Co. for sale, in and after August, 1868?

A. I think there were no others.

(The examination is here adjourned to January 24th, 1871, at 2 p. m.)

NEW YORK, *January 24th*, 1871.

The parties appear and the examination is proceeded with. The counsel for the complainant resumes his cross-examination of Maurice Handschin, who having been heretofore duly sworn, further deposes and says, asfollows:

Q. 56. Did A. Iselin & Co. make any loans of money to H. E. Dibblee & Co. during March, 1869? If yea, specify the same, and whether and when the same were afterwards paid.

129 A. They did make such loans. I produce a statement showing the dates and amounts of such loans, and also the dates of the payment thereof.

This statement is offered in evidence, is marked "Exhibit No. 18, J. B. M. 24, 1, '71," and is as follows:

H. E. Dibblee & Co., new loan account.

DR.		1869.	CR.		1869.
$5,000 00	loaned them	5th M'ch.	$5,000 00	returned	23 M'ch.
10,000 00	" "	6th "	5,000 00	"	29 "
5,000 00	" "	8th "	4,000 00	"	2 Ap'l.
108 52	interest at 7 %.		3,000 00	"	6 "
			3,108 52	"	30 "
$20,108 52			$20,108 52		

Q. 57. Were those loans "on call?"

A. The first two loans of the fifth and sixth days of March, and I think also the third of the eighth day of March were on "call."

Q. 58. Were those loans made with or without collateral, meaning by "collateral" a pledge of any property?

A. The first two we secured by a confession of judgment dated the sixth day of March, 1869, and by no other collateral security. The third was not secured in any way whatever.

Q. 59. Did A. Iselin & Co. make any loans to H. E. Dibblee & Co. other than those mentioned in Question No. 56 and other than the securities mentioned in the confession of judgment of the twenty-fifth day of February, 1869, after the last-mentioned date?

A. They made no new loans.

Q. 60. Referring you to your answer to Question No. 12, being the second question of this, your cross-examination, and now read to you, please to state how the residue of the judgment therein mentioned was paid.

130 A. I produce a statement from the books of A. Iselin & Co., showing the several amounts paid to the several banks by A. Iselin & Co., upon redeeming the securities mentioned in the confession of judgment of the twenty-fifth day of February, 1869, and the sums of one thousand dollars and nine hundred dollars paid in cash, and the sum of forty-three thousand six hundred and forty-nine dollars and fifty-two cents, being the balance due on the "judgment account" on the first and third days of May, 1869, and represented by the bill of sale.

The statement referred to is offered in evidence, is marked "Exhibit No. 19, J. B. M., 24, 1, '71," and is as follows:

Judgment account.

			1869.			1869.
$15,868 89.	Note	$16,000—B'k of Republic, 5 %.....	29 June, 1 May	$1,000 00,	the pay't.....	1 May
7,440 21	"	7,500—Cent. Nat. B'k, 11 June, 7 %.....	"	900 00,	" ch'k of 1 May.....	3 "
7,418 33.	"	7,500—Cent. Nat. B'k, 26 June, 7 %.....	"	43,642 52,	bill of sale sundry account & notes.....	1-3 "
14,822 08.	"	15,000—Mer. Ex. N. B'k, 1 July, 7 %.....	"			
$45,549 51				$45,549 52		

Q. 61. What was the nominal amount of the securities so redeemed; and also what was their market value?

A. Fifty-eight thousand dollars was their nominal amount, and fifty-four thousand one hundred dollars was their market value on the day the confession of judgment was given.

Q. 62. Was any, and what, allowance made to H. E. Dibblee & Co. by A. Iselin & Co., for the excess of the market value of these securities over the amount paid to the banks, as stated in "Exhibit No. 19?"

A. Yes, sir; just the difference.

Q. 63. Were you present at any interview when that difference was agreed upon, and who else was present?

131 A. No, sir; I was not present at any such interview; but I heard Mr. Adrian Iselin express himself to that effect, and I understood it as explained in my answer to Question No. 62.

Q. 64. Do you know whether there was any difference in the market value of the securities on the day when they were delivered to Mr. Dibblee, and on the day when A. Iselin & Co. took them back from the banks?

A. I do not.

Q. 65. Were you present at any interview between Mr. Iselin and Mr. Dibblee, which resulted in any of the loans of March, 1869, being made?

A. No, sir; I was not.

Q. 66. Was it a usual transaction in the business of A. Iselin & Co. to make loans to merchants upon the security of confession of judgment?

A. It was not.

Q. 67. Was such a practice usual with banks and bankers in this city?

A. I do not know.

Q. 68. In "Exhibit No. 2" the expression "reported collected" is used. Did you know or were you informed by Mr. Dibblee or Mr. Iselin that the collections made as stated "reported" in said exhibit were used by H. E. Dibblee & Co. in their business from time to time as collections were made?

A. I do not know, and was never informed what was done with the collections until after the bankruptcy proceedings were commenced, and then was told by Mr. Charles Wells, the witness heretofore examined.

Q. 69. Were the reports, "as collected," mentioned in said "Exhibit No. 2," made to you or to Mr. Iselin?

A. They were made to me on lists written by the book-keeper of H. E. Dibblee & Co.; but sometimes it was not distinctly stated as to some notes.

132 The examination is here adjourned to January 31, 1871, at 2 p. m.

NEW YORK, *January* 31, 1871.

The parties appear, and the counsel for the complainant resumes his cross-examination of Maurice Handschin, who having been heretofore duly sworn, further deposes and says as follows:

Q. 70. It appears by "Exhibit No. 19," produced by you, that the advances by A. Iselin & Co. to the banks to redeem the notes of H. E. Dibblee & Co., for which the railroad and State bonds were pledged as collateral were repaid by the one thousand nine hundred dollars cash and the forty-three thousand six hundred and forty-nine dollars and fifty-two cents of accounts and notes. Is that true, meaning is that the correct interpretation of your exhibit?

A. It is.

Q. 71. Is the fact so, to wit, that those credits did apply to the repayment of A. Iselin & Co. for those advances?

A. As I explained before, the entries in the ledger of A. Iselin & Co., of which this "Exhibit No. 19" is a copy, I think were made in the shortest and most comprehensive form in the way I made them. I should, however, have made them in a different form. I ought to have charged H. E. Dibblee & Co. for the market value of the bonds; also charged them with the payments made to the banks, and credited them per contra with the bonds returned and the payments received.

Q. 72. Was any allowance made on the return of the bonds for any interest accrued thereon after the time H. E. Dibblee & Co. re-

133 ceived them, or for any difference in the market value from what it was at such last mentioned time?

A. No, sir; they were taken back at the same value at which they were taken by H. E. Dibblee & Co.

Q. 73. Was any entry made on A. Iselin & Co.'s books, of any, and which, of the confessions of judgment they took?

A. No, sir.

Redirect examination by the counsel for the defendants Iselin :

Q. 74. Question No. 29 in your cross-examination was as follows : (Question No. 29 is read to the witness.) You will remember that this question was withdrawn by the counsel for the complainant as you were about to answer it. Please answer it now.

(Objected to by the counsel for the complainant.)

A. I made out the statement marked Exhibit No. 2, by direction of Mr. Adrian Iselin, and on showing it to him he remarked that I had not used the right expression in saying " all these notes were reported collected up to April 5th, 1869, and replaced by new notes and open accounts, amounting to $62,027.34;" but that it made no difference so long as the figures were correct.

(The counsel for the complainant objected, in due time, to all of the above answer, after and including the word " remarked.")

Q. 75. Please state whether A. Iselin & Co. purchased any notes made by any party or parties, between the seventh day of January, 1869, and the first day of May, 1869.

(Objected to by the counsel for the complainant as irrelevant and incompetent.)

134 A. They did not.

Q. 76. You have already stated in the course of your examination, in answer to Question No. 32, that the purchase of notes was a part of the regular business of A. Iselin & Co. Please state, if you can of your own knowledge, why they made no such purchase between the dates mentioned in the last question.

(Same objection as was made to the last question.)

A. They had no money for such purposes, having been called upon to make unusually large remittances to Europe.

(Same objection to the answer as to the question.)

Q. 77. Can you state of your own knowledge why, when the loans were made by A. Iselin & Co. to H. E. Dibblee & Co. in February, 1869, and for which the confession of judgment was given as security, such loans consisted of bonds and not of money?

(Objected to by the counsel for the complainant as irrelevant and incompetent, and because the question assumes that the transfers of the bonds were loans.)

A. Because they had no ready money, for the same reasons as before stated.

Q. 78. Can you state whether in the spring of 1869, and, if so, when H. E. Dibblee & Co. deposited money with A. Iselin & Co., and if you answer that they did so, please state further the amount of such deposit, the time and manner of its repayment or withdrawal, and, so far as you are acquainted with it, the nature of the transaction.

(Objected to by the counsel for the complainant as irrelevant and incompetent.)

A. On the sixteenth day of January, 1869, I received, as book-
135 keeper of A. Iselin & Co., a deposit of twenty thousand dollars from H. E. Dibblee & Co., with the remark by Mr. Adrian Iselin that it was a special deposit, and that H. E. Dibblee & Co. would dispose of it. On the fifteenth day of February, 1869, they (H. E. Dibblee & Co.) withdrew ten thousand dollars of this deposit, and on the seventeenth day of the same month they withdrew the further sum of ten thousand dollars. The deposit was made by the checks of H. E. Dibblee & Co., handed to me by Mr. Adrian Iselin with the remark I

have mentioned. No member of the firm of H. E. Dibblee & Co. was present at the time.

Q. 79. What amounts of money did H. E. Dibblee & Co. owe to A. Iselin & Co., on account of loans in the spring of 1867, 1868, and 1869, respectively?

A. I produce a written statement, prepared by myself, from the books of A. Iselin & Co., which answers the question. This is a copy of the account as it stands on the books of A. Iselin & Co.

(This statement is offered in evidence, is marked "Exhibit No. 20, J. B. M., 31, 1, '70," and is as follows :)

		Interest.	1867.	*Days*			*Interest.*	1867.	*Days.*
$20,000 00	Cash paid	$346 10	1 March,	89	$5,000 00	Cash received	$63 19	25 March,	.....
15,000 00	" "	239 17	8 "	82	4,000 00	" "	45 89	1 April,	.....
422 72	Interest *a* 7 p. c.				3,000 00	" "	26 25	15 "	.....
					4,000 00	" "	27 22	25 "	.....
$35,422 72		$585 27				Balance of interest	422 72	31 May,	.....
					19,422 72	Balance anew			
			1867.						
$19,422 72	Balance anew	$679 81	31 May,	180	$35,422 72				
20,000 00	Loaned them	462 78	1 Aug.,	119			$585 27		
20,000 00	" "	416 11	13 "	107					
15,000 00	" "	247 92	5 Sept.,	85				1867.	
					$5,000 00	Cash received	$51 52	7 Oct.,	53
1,731 77	Interest *a* 7 p. c.				4,000 00	" "	23 33	31 "	30
						Balance of interest	1,731 77	30 Nov.,	.....
$76,154 49		$1,806 62			67,154 49	Balance anew		30 "	.....
					$76,154 49		$1,806 62		
			1867,						
$67,154 49	Balance anew	$2,350 38	30 Nov.,	180					
								1868.	
					$10,000 00	Cash received	$89 44	14 April,	46
20,000 00	Loaned them	400 55	17 Feb.,	103	5,000 00	" "	40 83	18 "	42
4,000 00	" "	71 56	28 "	92	5,000 00	" "	32 08	25 "	35
15,000 00	" "	256 67	2 March,	88	4,000 00	" "	2 33	27 May,	3
5,000 00	" "	80 69	7 "	83		Balance of interest	3,246 39	31 "	.....
5,000 00	" "	73 89	14 "	76	108,400 88	Balance anew		31 "	.....
5,000 00	" "	71 94	16 "	74					
3,000 00	" "	40 25	21 "	69	$132,400 88		$3,411 07		
5,000 00	" "	65 14	23 "	67					
3,246 39	Interest *a* 7 p. c.				$10,000 00	Cash received	$313 06	19 June,	161
					10,000 00	" "	291 67	30 "	150
$132,400 88		$3,411 07			10,000 00	" "	270 28	11 July,	139
					10,000 00	" "	221 67	6 Aug.,	184
			1868.		60,000 00	" "	1,318 33	6-7 "	183
$108,400 88	Balance anew	$3,794 00	31 May,	180	2,000 00	" "	26 44	22 Sept.,	68
1,352 55	Interest *a* 7 p. c.	.....	30 Nov.,	.....		Balance of interest	1,352 58	30 Nov.,	.....
$109,753 43		$3,794 00			7,753 43	Balance anew	.....	30 "	.....
					$109,753 43		$3,794 00		
			1868.						
$7,753 43	Balance anew	.....	30 Nov.,	69	$7,944 88	Balance of old loan account.		1869.	
191 45	Interest *a* 7 p. c. to 7 April, 1869	.....	8 April,	.....		Received cash	.....	8 April,	.....
$7,944 88					$7,944 88				

137 Q. 80. Please state the amount due on the judgment account at the time the bill of sale of the 1st day of May, 1869, was put in your charge by Mr. Iselin; the net amount which the securities transferred by such bill of sale have realized, and the amount still due on the "judgment account." State also what amounts, giving the items, you have charged against that account.

A. I produce in answer to this question a written statement prepared by me, from the books of A. Iselin & Co.

(This statement is offered in evidence, is marked "Exhibit No. 21, J. B. M. 31, 1, '71," and is as follows:)

Statement showing the position of the judgment account, this 31st of January, 1871.

$47,839 52	Nominal amount of notes, accounts, and scrips, transferred by H. E. Dibblee & Co., by bill of sale of May 1st, 1869, to A. Iselin & Co., to satisfy balance of judgment, amounting to....	$43,649 52	
	Add sheriff's fees, $871.15, collection and lawyers' expenses, $194.72.....	1,065 87	
	Together.....	$44,715 39	
$39,594 27	Nominal or face value were collected, and produced net of allowances, exchange, and deductions, in compromises.....	38,231 67	
	Leaving unpaid.....	6,483 72	
	To which add interest at 7 % from 1st May, '69, to date.....	1,781 42	
$8,245 25	Balance of notes, accounts, and scrips to be collected against balance due to A. Iselin & Co..	$8,265 14	

Q. 81. The amount of eight thousand two hundred and sixty-five dollars and fourteen cents, as appears by "Exhibit No. 21," is then the amount still due to A. Iselin & Co., from this judgment account, is it not?

A. It is.

Q. 82. And the nominal amount of the securities and accounts transferred by the bill of sale of the first day of May, 1869, which A. Iselin & Co. still have to satisfy the balance still unpaid on this account, is eight thousand two hundred and forty-five dollars and twenty-five cents, is it not?

138 A. It is.

Q. 83. Are all of these securities and accounts past due?

A. They are all over-due, except the two insurance scrips, amounting together to two thousand and ninety dollars.

Q. 84. Please state what you know of the value of these unpaid and over-due securities and accounts.

A. $4,580 30 are good claims.
301 18 " doubtful claims.
3,363 79 " worthless claims.

Recross-examination by the counsel for the complainant:

Q. 85. Can you state the amount compromised in "Exhibit No. 21?"

A. Not without referring to my books.

Q. 86. How do you know that the amount of three thousand three hundred and sixty-three dollars and seventy-nine cents, mentioned in answer to Question No. 84, is worthless?

A. The collecting lawyers say so as to most of those claims, and, as to some which are still in A. Iselin & Co's hands, it is my own opinion that they are worthless, since the debtors have gone into bankruptcy.

Q. 87. Do you base any part of your statement that the amounts specified are doubtful and worthless, upon your general knowledge as an expert in the value of past-due accounts which the debtors have omitted or refused to pay after repeated demands?

A. For three claims I based my opinion on the repeated refusals and omissions to pay; these claims amounted to about six hundred dollars. As to those claims I answer the question by saying yes.

Q. 88. By your answer to Question No. 76, do you mean to be understood that A. Iselin & Co. could not have commanded as much money as they wanted to buy notes had they seen fit to do so, besides making the remittances you spoke of?

139 A. They could have commanded money, but they dislike to borrow money or to use their credit.

(The examination is here adjourned to February 2, 1871, at 3 p. m.)

NEW YORK, *February* 2, 1871.

The parties appear, and the examination is proceeded with. The counsel for the defendants Iselin recalls Maurice Handschin, who having been heretofore duly sworn, further deposes and says, as follows:

Q. 89. I desire to call your attention to Questions Nos. 8, 9, and 10, of your examination, and your answers thereto. (These questions and answers are here read to the witness.) My intention in putting Question No. 10 to you was to inquire the nominal amount of the securities transferred by the bill of sale still remaining in the hands of A. Iselin & Co., uncollected. Did you so understand the question?

A. I did not. I merely deducted the net cash amount received by A. Iselin & Co. from the nominal value of the securities transferred to them by the bill of sale of the first day of May, 1869, without taking into consideration the losses incurred in compromises, allowances, and collection expenses.

Recross-examination by the counsel for the complainant:

Q. 90. Was not this rather a mistake on your part in not correctly answering the question, than it was a misunderstanding of the question itself, which appears to be a very plain one? (Question No. 10 and answer are again read to the witness.)

A. I do not think that it was a mistake of mine. I understood the question as I answered it, and as I have to-day explained it.

140 Q. 91. Can you now answer Question No. 85?

A. I produce a statement which answers that question.

(This statement is offered in evidence, is marked "Exhibit No. 22, J. B. M., 2, 2, '71," and is as follows:)

"COMPROMISED CLAIMS. JUDGMENT ACCOUNT, DIBBLEE & CO.

"Aug. 6, 1869.	$485 98	act. L. Eptein & Co.	for 35%, loss		$301 46
"May 26, 1870.	67 33	note T. Mahon	" 50% & int., loss		32 28
"July 8, "	236 62	act. James Stiefel	" 40% loss		157 68
"Aug. 15, "	272 37	act. M. Prescott	" 26%, loss		217 90
					"$709 32

"The allowances which we were obliged to make were for payments made in advance by prompt debtors according to their agreements with H. E. Dibblee & Co., which were also binding on us; these discounts amounted sometimes to 6%. We had besides many claims for short measure, defective goods, and also for discounts due to debtors on former payments made to Dibblee & Co., themselves. All these items, together with loss on exchange and collecting expenses, amount to..... $653 28

"$1,362 60"

MAURICE HANDSCHIN.

Examination read over to the witness by me, and by him subscribed and sworn to before me this 2d day of Feb., 1871.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

The counsel for the defendants Iselin rests his case.

The counsel for the complainant states that he intends to produce testimony in rebuttal of that offered on behalf of the defendants Iselin, and asks an adjournment of eight days to enable him to procure such testimony.

The counsel for the defendants Iselin objects to any adjournment on the ground that the testimony is closed, and insists that should the examiner hold the counsel for the complainant entitled to an ad-
141 journment, his action shall be based upon an affidavit to be made by such counsel setting forth the fact, if such fact exists, that he expects to produce at the next meeting testimony in rebuttal of that offered on behalf of the defendants Iselin.

The question being submitted to the examiner, he decides to allow the counsel for the complainant until Saturday, the 4th day of February, 1871, at 2 p. m., to prepare and produce an affidavit stating, if such be the fact, that he intends to offer testimony in rebuttal; and announces that unless such an affidavit shall then be produced and submitted, or such rebutting testimony shall then be offered, the testimony in this cause, upon both sides, will then be held to have been closed.

The counsel for the complainant objects to the qualifications attached to the adjournment as granted.

The examination is here adjourned, in accordance with the above provisions, to February 4th, 1871, at 2 p. m.

NEW YORK, *February 4th*, 1871.

The parties appear and the examination is proceeded with:

The counsel for the complainant, by consent, recalls a witness, Charles Wells, who, having been heretofore duly sworn, further deposes and says, as follows:

Q. 32. Look at this paper now produced, and say what it is.

A. It is a true copy, made by me, of the account with A. Iselin & Co., taken from the ledger of H. E. Dibblee & Co., and is the only account with that firm upon the ledger of H. E. Dibblee & Co.

142 This statement is offered in evidence by the counsel for the complainant, and the counsel for the defendants Iselin gives the same consent as has been heretofore given relative to the other statements from the books of H. E. Dibblee & Co., produced by this witness. The paper is received in evidence, is marked "Exhibit No. 23, J. B. M., 4, 2, '71," and is as follows:

Transcript of the account with Messrs. A. Iselin & Co.

Dr. (Taken from the books of H. E. Dibblee & Co.) Cr.

1867.				1867.			
January	11	To cash	$20,000 00	February	15	By cash	$20,136 10
February	15	" interest	136 10				$20,136 10
			$20,136 10				
March	25	To cash	$5,000 00	March	1	By cash	$20,000 00
April	1	" "	4,000 00	"	8	" "	15,000 00
"	15	" "	3,000 00	August	1	" "	20,000 00
"	25	" "	4,000 00	"	13	" "	20,000 00
October	7	" "	5,000 00	September	5	" "	15,000 00
"	31	" "	4,000 00				
1868.				1868.			
April	14	" "	10,000 00	February	17	" "	20,000 00
"	18	" "	5,000 00	"	28	" "	4,000 00
"	27	" "	5,000 00	March	2	" "	15,000 00
May	27	" "	4,000 00	"	7	" "	5,000 00
June	19	" "	10,000 00	"	14	" "	5,000 00
"	30	" "	10,000 00	"	16	" "	5,000 00
July	11	" "	10,000 00	"	21	" "	3,000 00
August	6	" "	10,000 00	"	23	" "	5,000 00
"	7	" " as 6th	60,000 00				
September	22	" "	2,000 00				
1869.							
April	8	" "	7,944 88				
			$158,944 88	1869.			
				April	8	By interest	6,944 88
May	1	To cash	$1,900 00				$158,944 88

The above is the only account with Messrs. A. Iselin & Co. upon the books of H. E. Dibblee & Co.

Q. 33. Look at this other paper now produced, and say what it is.

A. It is a statement, made by me, of the matters stated in the heading thereof, relative to the maturity and payment of the notes, a list of which is annexed to the answer of the defendants Iselin in this cause.

This statement is offered in evidence by the counsel for the
143 complainant, and the counsel for the defendants Iselin gives the same consent as he gave in regard to "Exhibit No. 23." The paper is received in evidence, is marked "Exhibit No. 24, J. B. M., 4, 2, '71," and is as follows:

"The books of H. E. Dibblee & Co. show that all the notes made by them, amounting to the sum of $47,784.51, purchased by A. Iselin & Co., in open market, in the fall of 1868, except one note for $1,052.93, purchased January 7, 1869, a list of said notes being attached to the answer of A. Iselin & Co., were due and paid between the 24th of February and the 25th of March, 1869, viz:

"$12,564.10 was due between the 24th and 28th of Feb., 1869, inclusive.
" 15,434.44 " " 2d " 7th " March " "
" 19,785.97 " " 8th " 25th " " " "

"$47,784.51."

Cross-examination by counsel for the defendants Iselin:

Q. 34. Please state whether these notes mentioned in "Exhibit No. 24" were paid at or before maturity.

A. They were paid at maturity.

CHARLES WELLS.

Examination read over to the witness by me, and by him subscribed and sworn to before me this 4th day of February, 1871.

JAMES BETTS METCALF,
U. S. Commissioner and Examiner.

Testimony closed.

The testimony having been closed, the examiner was thereupon requested to prepare and furnish to the printer a true copy of the foregoing testimony and exhibits, and to personally superintend the correction of the proof and revise thereof, and it was consented, agreed, and stipulated by and between the counsel for the complainant and the counsel for the defendants Iselin, that the said testimony and exhibits,
144 having been so printed, a copy of the same should be substituted for the originals thereof, and, having been certified to by the signature and official seal of the examiner, filed in the office of the clerk of the district court of the United States for the southern district of New York, as and for and in place of the said originals, and that such printed copy, so certified and filed, should thereafter be deemed to be the originals of said testimony and exhibits, all informalities being waived.

Whereupon the examination was closed.

And I do further report that, in pursuance of the request aforesaid, I have prepared and furnished to the printer a true copy of all the testimony taken by me in this cause, and of the exhibits therein referred to, and have personally superintended the correction of the proof and revise thereof, and I do hereby certify that the foregoing printed copy of the said testimony and exhibits is a true and correct copy of the originals thereof, and of the whole of the same.

All of which is most respectfully submitted.

Dated New York City, February 24th, 1871.

[L. S.] JAMES BETTS METCALF,
United States Commissioner and Examiner.

145 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The amended petition of Henry A. Garrett, James R. Clark, j'r, Edwin D. Griswold, J. R. Cordner and Frederick A. Whitney, copartners, composing the firm of Garrett, Clark & Co., of the city of New York, respectfully shows:

That they are creditors of Henry E. Dibblee, David P. Bingley, and John J. Krauss, copartners, composing the mercantile firm of H. E. Dibblee & Co., of the city of New York, who are hereinafter described as defendants, and who for a period of six months next preceding the date of filing this petition have resided and carried on business in the city of New York, in the county of New York and State of New York, and district aforesaid.

That your petitioners' demand is provable against the defendants in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That your petitioners believe that said defendants are debtors to an amount exceeding the sum of three hundred dollars; that your peti-

tioners' demand exceeds the amount of two hundred and fifty dollars, and that the nature of the demand of your petitioners against the said defendants is as follows, to wit:

An account for divers goods, wares, and merchandise which the said petitioners, during the months of February and March, A. D. 1869, sold and delivered to the said defendants at their request on a credit which has not expired, and which amounts to the sum of ninety-three hundred and twenty-five dollars and twenty-five cents; that the said de-
146 fendants have not paid the same or any part thereof, and the same remains wholly unpaid. That the February purchases were made on six months' credit, and the March purchases on four months' credit. That for the February purchases the defendants made and endorsed in their partnership name and delivered to the petitioners their three promissory notes, payable to their own order six months after date: one for $1,487.69, which will be due August 13; one for $700.06, which will be due August 16; and one for $1,662.34, which will be due August 30, 1869. That for the March purchases the defendants made and endorsed in their said partnership name, and delivered to the petitioners their four promissory notes payable to their order, one for $1,407.22 which will be due July 18; one for $1,502.60, which will be due July 20; one for $1,352.72 which will be due July 22; and one for $1,212.62, which will be due July 30, 1869. That the petitioners believe, and therefore allege, that the said debt is past due because the defendants procured the said goods from them by fraudulently concealing from them the existence of the judgment hereinafter mentioned. That the petitioners sold and delivered the said goods and received said notes without any knowledge or notice of the existence of said judgment, and would not have sold or delivered said goods had they had any such knowledge or notice.

And your petitioners further represent, that within the six calendar months next preceding the date of this petition, the said defendants did commit acts of bankruptcy within the meaning of said act, to wit:

In that they the said defendants within the period aforesaid, and within said district, to wit:

(1.) On or about the 25th day of February, A. D. 1869, being insolvent and in contemplation of insolvency, did give to Adrian Iselin and Isaac Iselin, composing the firm of A. Iselin & Co., of New York City, in the county of New York and State of New York, a warrant to
147 confess judgment, and did procure and suffer their property to be taken on legal process in favor of the said Adrian and Isaac Iselin of New York, in the county of New York and State of New York, the said judgment to be confessed; and on April 30, 1869, said judgment was entered in the supreme court of the State of New York, and the judgment roll filed in the clerk's office of the county of New York, by virtue of said confession, for fifty-four thousand and one hundred dollars with five dollars' costs, and execution was issued thereon against the property of said defendants, directed and delivered to the sheriff of the county of New York, and by him levied on the stock in trade, goods and chattels of the said defendants in said city. That the said defendants gave the said warrant, and procured and suffered their property to be taken as aforesaid with intent thereby to give a preference to the said Adrian Iselin and Isaac Iselin of New York, in the county of New York and State of New York, as creditors of the said defendants, and with intent, by such disposition of their property, to defeat and delay the operation of the said act.

(2.) That the said defendants within the period aforesaid, to wit, since

February 25, 1869, being insolvent and in contemplation of insolvency, did make to Adrian Iselin and Isaac Iselin, composing the firm of A. Iselin & Co. of New York, in the county of New York and State of New York, a payment of money with intent thereby to give preference to the said Adrian Iselin and Isaac Iselin as creditors of the defendants. That a copy of the judgment roll of said judgment is hereto annexed, and the petitioners allege that the same as to Bingley and Krauss is void, because the same was not signed or verified by the said Bingley and Krauss, or either of them.

(3.) That the said defendants, within the period aforesaid and within said district, to wit, on the 1st day of May, A. D. 1869, being insolvent and in contemplation of insolvency, did make to Adrian Iselin and
148 Isaac Iselin composing the firm of A. Iselin & Co., of New York, in the county of New York and State of New York, a conveyance or transfer of the estate, rights, and credits of the said defendants, composing the said firm of H. E. Dibblee & Co., to wit, of a large number and amount of bills receivable and accounts belonging and owing to said firm, to wit, to the value of about forty-five thousand dollars with interest, to give a preference to said Adrian and Isaac Iselin, composing said firm of A. Iselin & Co., as creditors of said defendants composing said firm of H. E. Dibblee & Co., and with intent by such disposition of their property to defeat and delay the operation of the said act.

(4.) That the said defendants, within the period aforesaid and within the said district, to wit, in the month of April, A. D. 1869, being insolvent and in contemplation of insolvency, did make to the wife of the said John J. Krauss of New York, in the county of New York and State of New York, a payment in money and bills or accounts receivable, belonging to said defendants' said firm, of the value of about four thousand and dollars with interest, to give a preference to the said wife of said Krauss. The acts of bankruptcy above alleged, are alleged on information and belief.

Wherefore your petitioners pray that the said defendants may be declared bankrupts, and that a warrant may be issued to take possession of their and each of their estates, that the same may be distributed according to law, and that such further proceedings may be had thereon as the law in such cases prescribes.

GARRETT, CLARK & CO.,
By JAS. R. CORDNER,
Petitioning Creditors.

CHARLES H. SMITH,
Attorney and counsel for petitioning creditors,
243 *Broadway, N.Y.*

149 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James R. Cordner, one of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by me, are true, so far as the same are stated of my own knowledge, and those matters which are stated therein on information and belief are true, according to the best of my knowledge, information, and belief.

JAS. R. CORDNER.

Subscribed and sworn to before me, this 5th day of May, A. D. 1869.
JOHN A. SHIELDS, *U. S. Com.*

150 Supreme court, city and county of New York.

ADRIAN ISELIN & ISAAC ISELIN, PLAINTIFFS,
against
HENRY E. DIBBLEE, DAVID P. BINGLEY, AND John J. KRAUSS, defendants.

We do hereby confess judgment in this action in favor of Adrian Iselin and Isaac Iselin, for the sum of fifty-four thousand one hundred dollars, and authorize judgment to be entered therefor against us.

The confession of judgment is for a debt justly due to the plaintiff, arising from the following facts: The plaintiffs are, and at the times hereinafter mentioned were, copartners in business, as bankers, in the city of New York, under the firm-name of A. Iselin & Co., and the defendants are and were at said several times also copartners in business in said city, under the firm-name of H. E. Dibblee & Co.; on the twentieth day of February, 1869, the plaintiffs loaned and advanced to the defendants as such copartners as aforesaid, and to be used and employed by them in their firm-business, securities of the cash value of seventeen thousand five hundred dollars, and on the 23d day of February, 1869, other securities of the cash value of eighteen thousand

151 six hundred dollars; and on the 24th day of February, 1869, other securities of the cash value of eighteen thousand six hundred dollars, the cash value of all of said securities being the sum of fifty-four thousand one hundred dollars, which sum is now due and owing by us, the said defendants, to the said plaintiffs; the cash value of said securities having become immediately due from us to the plaintiffs at the time when the same were respectively loaned and advanced as aforesaid. We have not paid any part of the said cash value of said securities, but are now justly indebted to the said plaintiffs therefor in the said sum of fifty-four thousand one hundred dollars, for which we hereby confess judgment as aforesaid.

(Signed) HENRY E. DIBBLEE,
H. E. DIBBLEE & CO.

COUNTY OF NEW YORK, *ss:*

Henry E. Dibblee, one of the defendants above named, being duly sworn, says that the above statement and confession of judgment, and the facts therein, are true, to his own knowledge, and further he says not.

HENRY E. DIBBLEE.

Sworn to before me this 25th day of February, 1869.

FREDERICK BULL,
Notary Public, New York City.

152 [Form No. 58.]

Adjudication of bankruptcy.—Creditor's petition.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF HENRY E. DIBBLEE, JOHN J. KRAUSS, AND DAVID P. BINGLEY, BANKRUPTS. } In bankruptcy. No. 2465.

At the city of New York, in said district, the 2d day of June, A. D. 1869.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

This cause came on to be heard at the city of New York, in said court,

on May 8, 1869, at which time the petitioning creditors appeared by Charles H. Smith, their attorney, and the said Henry E. Dibblee appeared by R. W. Townsend, his attorney, and filed a denial of bankruptcy, and demanded a jury trial; and the said John J. Krauss and David P. Bingley appeared in person and by S. E. Church, their attorney, and consented to an adjudication of bankruptcy against them. Afterwards, and at this time and place, the cause came on to be tried, on the denial aforesaid, by the said Henry E. Dibblee, before the court and a jury. The said Charles H. Smith appeared as counsel for the petitioner, and Anthony R. Dyott for the said Dibblee. Be-
153 fore the coming in of the verdict, the petitioners' counsel, by leave of the court, withdrew the second and third acts of bankruptcy alleged in the petition. The jury found a verdict for the said creditors.

And thereupon, and upon consideration of the proofs in said cause, and the arguments of the counsel, it was found that the facts set forth in said petition, except as to the acts of bankruptcy so withdrawn, were true; and it is therefore adjudged that Henry E. Dibblee, John J. Krauss, and David P. Bingley became bankrupts, and each of them became bankrupt within the true intent and meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, before the filing of the said petition, and each of them is therefore declared and adjudged a bankrupt accordingly.

And it is further ordered, that each of the said bankrupts shall, within five days after the date of this order, make and deliver, or transmit by mail, post-paid, to the marshal as messenger, a schedule of his creditors, and an inventory of his estate, in the form and verified in the manner required of the petitioning debtor by the said act.

And it is further ordered that the above-entitled case be referred to Isaiah T. Williams, one of the registers in bankruptcy of this court, to take such proceedings thereon as are required by the said act.

Witness the honorable Samuel Blatchford, judge of the said court, and the seal thereof, at New York, in said district, on the 2d day of June, A. D. 1869.

[SEAL OF THE COURT.] GEORGE F. BETTS,
Clerk of the District Court for said District.

154 *Assignment of bankrupt's effects.*

[Form No. 18.]

No. 2465.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF HENRY E. DIBBLEE, DAVID P. BINGLEY, AND JOHN J. KRAUSS, BANKRUPTS. } In bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Know all men by these presents, that James R. Clark, junior, of the city of New York, in said district, has been duly appointed assignee of the estate and effects of the firm of Henry E. Dibblee and Company, and of Henry E. Dibblee, David P. Bingley, and John J. Krauss, members and partners of said firm.

Now, therefore, I, Isaiah T. Williams, register in bankruptcy of said

district, by virtue of the authority vested in me by the 14th section of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the said James R. Clark, junior, assignee as aforesaid, all the estate, real and personal, of the said Henry E. Dibblee and Company, bankrupts aforesaid, including all the
155 property of whatever kind of which they were possessed, or in which they were interested, or entitled to have, on the third day of May, A. D. 1869, with all their deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act.

To have and to hold all the foregoing premises to the said James R. Clark, junior, and his heirs forever; in trust, nevertheless, for the use and purposes, with the powers and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed, this 9th day of August, A. D. 1869.

[L. S. OF THE COURT.] I. T. WILLIAMS,
Register in Bankruptcy.

Filed on the 24th day of May, 1870, at 11 o'clock a. m.

I, George F. Betts, clerk of the district court of the United States for the southern district of New York, do hereby certify that the above is a true copy of the original assignment made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the said United States the ninety-fourth.

[L. S.] GEO. F. BETTS, *Clerk.*

156 *Assignment of bankrupt's effects.*

[Form No. 18.]

No. 2465.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF HENRY E. DIBBLEE, DAVID P. BINGLEY, AND JOHN J. KRAUSS, BANKRUPTS. } In bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Know all men by these presents, that James R. Clark, jun., of the city of New York, in said district, has been duly appointed assignee of the estate and effects of the firm of Henry E. Dibblee & Co., and of Henry E. Dibblee, David P. Bingley, and John J. Krauss, members and partners of said firm. Now, therefore, I, Isaiah T. Williams, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the

said James R. Clark, jun., assignee as aforesaid, all the estate, real and personal, of the said Henry E. Dibblee, one of the bankrupts aforesaid, including all the property of whatever kind of which he was possessed, or in which he was interested or entitled to have on the
157 3d day of May, A. D. 1869, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act.

To have and to hold all the foregoing premises to the said James R. Clark, jun., and his heirs forever; in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in the said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed, this 9th day of August, A. D. 1869.

[L. S. OF THE COURT.] I. T. WILLIAMS,
Register in Bankruptcy.

Filed on the 24th day of May, 1870, at 12 o'clock m.

I, George F. Betts, clerk of the district court of the United States for the southern district of New York, do hereby certify that the above is a true copy of the original assignment made in the above-entitled matter.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-fourth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States the ninety-fourth.

[L. S.] GEO. F. BETTS, *Clerk.*

158 *Assignment of bankrupt's effects.*

[Form No. 18.]

No. 2465.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF HENRY E. DIBBLEE, DAVID P. BINGLEY, AND JOHN J. KRAUSS, BANKRUPTS. } In bankruptcy.

SOUTHERN DISTRICT OF NEW YORK:

Know all men by these presents, that James R. Clark, jun., of the city of New York, in said district, has been duly appointed assignee of the estate and effects of the firm of Henry E. Dibblee and Company, and of Henry E. Dibblee, David P. Bingley, and John J. Krauss, members and partners of said firm. Now, therefore, I, Isaiah T. Williams, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, do hereby convey and assign to the said James R. Clark, j'r, assignee as aforesaid, all the estate, real and personal, of the said David P. Bingley, one of the bankrupts aforesaid, including all the property of whatever kind, of which he was possessed,

or in which he was interested, or entitled to have, on the third day of May, A. D. 1869, with all his deeds, books, and papers relating
159 thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act.

To have and to hold all the foregoing premises to the said James R. Clark, junior, and his heirs forever; in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand, and caused the seal of said court to be affixed, this ninth day of August, A. D. 1869.

[L. S. OF THE COURT.] I. T. WILLIAMS,
Register in Bankruptcy.

Filed on the 25th day of May, 1870, at 10½ o'clock a. m.

I, George F. Betts, clerk of the district court of the United States for the southern district of New York, do hereby certify that the above is a true copy of the original assignment made in the above-entitled matter.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the said United States the ninety-fourth.

[L. S.] GEO. F. BETTS, *Clerk.*

160 At a stated term of the district court of the United States for the southern district of New York, held at the court-room thereof,

July 18, 1871. Present, Hon. Samuel Blatchford, judge.

JAMES R. CLARK, JR., ASSIGNEE,
against
ADRIAN ISELIN, ISAAC ISELIN, AND OTHERS.

On consent of the solicitors for the respective parties, ordered, that the following amendments be made of the pleadings nunc pro tunc, as of the time of filing the same, and that such amendments be made by the clerk, by inserting the same in the originals on file. After the word "ignorant," in fol. 22 of the bill (line 16, page 9, of printed "pleadings and evidence,") insert the following words:

"And your orator further shows unto your honor that the bankrupts made the following payments to the defendants Iselin at the dates specified, to wit: 1869, March 23, $5,000; March 29, $5,000; April 2, $4,000; April 6, $3,000; April 30, $3,108.52; amounting to $20,108.52; which payments were made in payment of prior loans made by the said defendants Iselin, to the bankrupts, as follows: 1869, March 5, $5,000;
March 6, $10,000; March 8, $5,000. The said loans were made
161 on call; the first two loans were secured by a confession of judgment, which was never entered of record, and by no other security; the third was not secured in any way whatever. The said confession of judgment was made by the said Dibblee alone, in the name of said firm of H. E. Dibblee & Co., in form the same as the confession of judgment hereinabove set forth."

After the word "payments," in the prayer of the bill, (folio 39, line 21, page 13, of printed "pleadings and evidence,") insert "and transfers," and after the word "aforesaid," same line, strike out the word "since," and after the word "aforesaid" in fol. 39, line 23, page 13, of said printed "pleadings and proof," insert "in March and April, 1869, or thereabouts," and after the words "United States," (in folio 49 of the answer, line 14, page 24, of the printed "pleadings and evidence,") insert the following words, "or any preference whatever, or as to whether the said bankrupts were acting in contemplation of insolvency;" after the word "act," in folio 50, of the answer, (line 20, page 24, of the printed "pleadings and evidence,") insert the following words, "or to prevent their property from coming to the assignee in bankruptcy, or to prevent the same from being distributed under the said act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of the said act." After the word "action," in fol. 116, of the answer, (line 25, page 36, of printed "pleadings and evidence,") insert the following words, "and these defendants further answering the said interrogatory, numbered five, (5,) say that on the 23d day of March, 1869, the said bankrupts paid to these defendants the sum of $5,000, and on the 29th day of March, 1869, the further sum of $5,000; and on the 2d day of April, 1869, the further sum of $4,000; and on the 6th day of April, 1869, the further sum of $3,000; and on the 30th day of April, 1869, the
162 farther sum of $3,108.52, amounting in all to the sum of $20,108.52; all of which payments were made in payment of prior loans made by these defendants to the bankrupts, that is to say, one loan of $5,000 made March 5, 1869; one other loan of $10,000 made March 6, 1869; and one other loan of $5,000 made March 8, 1869. That the said loans were made on call; that the first two of said loans were secured by a confession of judgment which was never entered of record, and by no other security, and that the third was not secured in any way whatever; that the said confession of judgment was executed by the said Henry E. Dibblee alone, in the name of the firm of H. E. Dibblee & Co., in form the same as the confession of judgment hereinbefore referred to.

(Signed) SAMUEL BLATCHFORD.

A true copy of the original on file.

[SEAL.] GEORGE F. BETTS, *Clerk.*

163 At a stated term of the district court of the United States for the southern district of New York, held at the court-room, in the city of New York, June , 1871.

Present: Hon. Samuel Blatchford, judge.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts,

against

ADRIAN ISELIN, ISAAC ISELIN, HENRY E. Dibblee, David P. Bingley, and John J. Krauss.

This cause coming on to be heard on the pleadings and proofs as to the defendants Adrian Iselin and Isaac Iselin, and on the bill taken as confessed by the other defendants, and the questions arising thereon having been argued by Charles H. Smith and E. W. Stoughton, of coun-

sel for the plaintiff, and by Henry W. Clark, of counsel for the defendants Adrian Iselin and Isaac Iselin, and having been considered by the court:

It is ordered, and adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree that the title of the said Adrian Iselin and Isaac Iselin to the notes,
accounts, securities, and property assigned to them by the bank-
164 rupts, by the bill of sale of May 1st, 1869, mentioned in the pleadings and proofs, and to the sum of nineteen hundred dollars, in money, therein also mentioned, paid to the said Adrian Iselin and Isaac Iselin, by the bankrupts, at or about the same time with the delivery of said bill of sale, and to the securities mentioned in the confession of judgment set forth in the bill of complaint, and which securities are more fully described in the answer of said defendants Adrian Iselin and Isaac Iselin, (subject to the amount which the said Adrian Iselin and Isaac Iselin paid to the several banks to which the said securities were hypothecated to redeem the same,) was, and is, and is hereby adjudged to be fraudulent and void under the provisions of the bankruptcy act, as against the plaintiff as assignee, as aforesaid, and that the said plaintiff is entitled to recover the said notes, accounts, securities, and property so assigned by said bill of sale, as aforesaid, or the value thereof, and interest, and the said sum of nineteen hundred dollars and interest, and the said securities mentioned in the said confession of judgment, subject as aforesaid, from the said Adrian Iselin and Isaac Iselin, as hereinafter provided.

And it is further ordered, adjudged, and decreed that the said Adrian Iselin and Isaac Iselin shall not be allowed to prove, in the said bankruptcy, the debt, in payment of which the said money, notes, accounts, securities, and property hereinabove mentioned, were taken—that is to say, the judgment of fifty-four thousand one hundred dollars, set forth in the said bill of complaint, or the debt for which the same was recovered or confessed.

And it is further ordered, adjudged, and decreed that the plaintiff recover of the said defendants Adrian Iselin and Isaac Iselin, the costs of this action and of the reference hereby ordered in respect to the property hereinabove mentioned, to be taxed by the clerk.

And it is further ordered, adjudged, and decreed that it be and is
hereby referred to James Betts Metcalf, esquire, who is hereby ap-
165 pointed special master of this court for that purpose, to take and report the following accounts:

(1.) An account of all the notes, accounts, and securities assigned to the said Adrian Iselin and Isaac Iselin, by the said bill of sale, and of the amounts thereof, and the names and residences of the debtors, and dates when the same fell due, and of the amount collected or realized by the said Adrian Iselin and Isaac Iselin on each, and the date thereof, and the interest on each amount so received, and specifying which, if any, of the said notes, accounts, and securities have been realized in full and which have not been realized in full, and the amount of the deficiency. Also those, if any, which remain wholly or partially unpaid, and of the value of all the said notes, accounts, securities, and property on May 1st, 1869, and whether any and which of the same have not been collected or disposed of, so that the same can be transferred by the said Adrian Iselin and Isaac Iselin to the plaintiff, and the present value thereof. Also specifying what ordinary collection expenses the said Adrian Iselin and Isaac Iselin have been put to in making the said collections, which, or the equivalent of which, the estate of the bankrupts

in the hands of the said plaintiff would have been subject to had the said property come to the said plaintiff. Also, the said account shall specify the market value of the said securities mentioned in the said confession of judgment on May 1st, 1869, and the market value thereof at such times thereafter as either party shall prove before the said master.

(2.) Debit and credit account, in which the said Adrian Iselin and Isaac Iselin shall be charged with the said sum of nineteen hundred dollars, and interest from the time when it was so paid. Also with the value of the said securities mentioned in the said confession of judgment, and more fully described in the answer of the said defendants Adrian
166 Iselin and Isaac Iselin, at such time, on or after May 1, 1869, to be specified in said report, as the said master shall determine to be the proper time at which to fix the said value for the purpose of this decree. And in which account the said Adrian Iselin and Isaac Iselin shall also be charged with the value of the said notes, accounts, property, and securities, assigned by the said bill of sale of May 1, 1869, with interest on the same from that date, or from such subsequent date to be specified in said report, as the said master shall determine to be the proper date from which to calculate interest, and in which account the said Adrian Iselin and Isaac Iselin shall, as of the date of the payments hereinafter mentioned, be credited with the amounts paid by them to the several banks to redeem the said securities mentioned in the said confession of judgment, pledged or hypothecated to the said banks, as mentioned in the said bill of complaint and answer; and also, in determining the value aforesaid, shall be allowed such ordinary expenses of collection above mentioned as the said master shall determine the said plaintiff would have had to incur to make the said collections, had the said property come to the said plaintiff; and said account shall also state the balance with which the said Adrian Iselin and Isaac Iselin are chargeable, pursuant to this decree, and that the said master determine and report what provision should be made in respect to the said property which he shall find can be transferred to the said plaintiff by the said Adrian Iselin and Isaac Iselin.

It is further ordered, adjudged, and decreed, that the said Adrian Iselin and Isaac Iselin do deliver to and file with the said master an account in writing, verified by the oath of them, or of the said Adrian Iselin, to the best of their or his knowledge, information, and belief, of all the said property, estate, and effects, and of the disposition made by them of the same, and the several amounts realized by them, with the dates thereof, and containing all the particulars required for the
167 accounts above provided to be reported by the said master, and that the said plaintiff have leave to surcharge and falsify said account.

And it is further ordered, adjudged, and decreed that the said defendants Adrian Iselin and Isaac Iselin attend before the said master from time to time, as may be required by his summons served on their solicitor for that purpose, and produce such books and papers, and submit to such examination as the said master shall direct in relation to the matters in controversy, and that either party be at liberty to examine witnesses in relation thereto. And it is further ordered, adjudged, and decreed that on the coming in and filing of the said report, either party be at liberty to file exceptions thereto within eight days after notice of filing the*leof*, or within such further time as may be allowed for that purpose, which exceptions may by brought to a hearing on a notice by either party of five days.

And it is further ordered, adjudged, and decreed, that on the coming in and confirmation of the report of the said master in the premises, the said plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount, and have the further relief to be specified in such report, and in respect to which the said report shall be confirmed, and such further relief as the court on hearing exceptions to such report may grant, provided if the solicitor of the plaintiff and of the said Adrian Iselin and Isaac Iselin shall file a stipulation dispensing with the said reference and agreeing upon the amount due and other relief to be granted to the plaintiff, then the said plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount, and have the relief specified in such stipulation, together with the costs aforesaid, and that he have execution therefor, which stipulation may be made for the sole purpose of dispensing with a reference, and shall not prejudice the rights of either party on any appeal from this decree.

And it is further ordered, adjudged, and decreed, that as to the
168 bills receivable, accounts, and assets alleged in the said bill of complaint to have been transferred to said Adrian Iselin and Isaac Iselin, by the bankrupts, in March and April, 1869, as collateral security for indebtedness or liability of the bankrupts, to the said Adrian Iselin and Isaac Iselin, amounting to the principal sum of sixty-one thousand dollars or thereabouts, and in respect to which it is admitted by the answer that such property, to the amount of about seventy-two thousand dollars, was so transferred, and alleged therein that the said transfer was to replace other securities as therein alleged, the title of the said Adrian Iselin and Isaac Iselin is not invalid as against the plaintiff, but that the said Adrian Iselin and Isaac Iselin are liable to account to the plaintiff for the same, after paying the debts to secure which the same were so received, and all proper charges and expenses thereon, including the expenses of the accounting hereby directed in respect thereto.

And it is further ordered, adjudged, and *ag*reed, that the said master take and state an account of the said property and the proceeds thereof, and of the charges therein, and of any surplus thereof in money or property of right belonging to the plaintiff, and of any deficiency in respect to which the said Adrian Iselin and Isaac Iselin shall have the right to prove the same in this bankruptcy; and that the said Adrian and Isaac Iselin deliver to and file with the said master an account verified as aforesaid, and containing all the particulars required to enable the said master to take and state the said account; and that the said plaintiff have leave to surcharge and falsify the said account; and that the said master report what final decree should be made in respect to the said property and proceeds.

And it is further ordered, adjudged, and decreed, that in order that this decree shall not prejudice the rights of the plaintiff if he shall appeal from the same, the said master, if the plaintiff shall so request, shall appoint a receiver to take charge of any surplus in money,
169 and of any uncollected notes, accounts, demands, or securities which he shall determine shall be transferred to the plaintiff by the said Adrian Iselin and Isaac Iselin, with the usual powers of receivers in like cases, and with power to collect the same, or by leave of the court, from time to time, to be obtained as occasion may require, to settle, sell, or compromise any such debts, accounts, demands, or securities. Also to take from such receiver and file the requisite security, and thereupon the said receiver shall be vested with all his rights and powers in the premises.

And it is further ordered, adjudged, and decreed that, on the coming in and filing such report, either party be at liberty to file exceptions, and that the same may be brought to hearing as above provided, and that, on the confirmation of the said report, the said parties shall have the relief thereby directed, so far as the same shall be confirmed, or as the court, on the hearing of such exceptions, shall direct.

And it is further ordered, adjudged, and decreed that the said money, hereby adjudged to be paid by the defendants Adrian Iselin and Isaac Iselin, be paid by them into the Bank of New York National Banking Association to the credit of the assignee in the said bankruptcy, or if paid to the marshal on execution, that the same be paid by him into the said bank to the credit of said assignee, unless the court shall give different directions.

And it is further ordered, adjudged, and decreed that in all other respects than is hereinabove adjudged, the prayer of the said bill of complaint be denied.

(Signed) SAMUEL BLATCHFORD.

Filed July 31, 1871.
A true copy from the original on file.

GEORGE F. BETTS, *Clerk.*

170 At a stated term of the district court of the United States for the southern district of New York, held at the court-room, New York City, January 12, 1872, present, Hon. Samuel Blatchford, judge.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts,
against
ADRIAN ISELIN, ISAAC ISELIN, AND THE SAID Henry E. Dibblee, David P. Bingley, and John J. Krauss.

The parties having voluntarily accounted and filed a stipulation pursuant to the interlocutory decree filed herein July 31, 1871, which stipulation is hereby made a part of this decree, and is in the words and figures following, to wit:

171 United States district court, southern district of New York.

JAMES R. CLARK, JR., ASSIGNEE,
against
ADRIAN ISELIN AND ISAAC ISELIN, ET AL.

Pursuant to the provisions of the decree of this court made in this cause, filed July 31, 1871, and without prejudice to the rights of either party on any appeal, it is stipulated as follows:

(1.) The amount of money, received by the said Adrian Iselin and Isaac Iselin from the notes, accounts, securities, and property conveyed to them by the bill of sale of May 1, 1869, mentioned in the pleadings and proofs, and in said decree, is $41,478.67.

(2.) The ordinary collection expenses the said Adrian Iselin and Isaac Iselin have been put to in making the said collections, which, or the equivalent of which, the estate of the bankrupts in the hands of the plaintiff, would have been subject to had the said property come to the said plaintiff, is $1,710.36.

(3.) The balance of the said receipts, deducting said expenses, is $39,768.31. The average date of the receipts of the several sums aggregating to the said sum is October 5, 1869, and from which date interest is to be calculated according to said decree, and which principal and interest amounts on and including September 1, 1871, to forty-five thousand seventy-six dollars and fifty-six cents.

(4.) There remains in the possession of the said Adrian Iselin and Isaac Iselin the following accounts, notes, and scrip, being the residue of the property conveyed by said bill of sale, and which, according to said decree, are to be delivered to the plaintiff:

173

ACCOUNTS.

Date.	Names.	Maturity.	Amount.
'69, April 6	Collins & Co., Eufaula, Ala	4 mos.	$97 11
" " 23	A. Cohn, Plymouth, N. C	"	115 56
" M'ch 15	Coker & Baker, Marianna, Fla. (Bal.)	30 d	133 02
'67, Oct. 5	J. P. Coker, Cedar Bluff, Ala	4 m.	327 01
'69, April 9	J. Davenport & Son, Elkhard, Ind	"	246 55
" " 3	Prost & Sutrow, Baltimore, Md	30 d.	298 75
" M'ch 16	Epstein & Einstein, Savannah, Ga	4 m.	122 88
" " 23	S. H. Ferguson, Liberty, Va	30 d.	89 83
" " 15	Jos. Hein, 259 1st Ave., N. Y	60 d.	102 16
" April 18	G. Hoffman, Florence, S. C	4 m.	29 80
" " 9	Hart, Collins & Co., Orange Hill, Fla	"	226 60
" M'ch 5	T. H. Kendall, Ansonville, N. C	30 d.	72 80
" April 27	S. Luidheim, Alexandria, Va	4 m.	139 00
" " 29	J. A. Loeb, Chicago, Ill	"	100 00
" " 29	A. Lambert, New Haven, Conn	30 d.	34 54
'68, Oct. 2	Ludderman & Co., Tuscumbia, Ala	4 m.	74 26
'69, April	D. C. Otis, Patterson, N. J	"	1,065 60
" " 6	J. H. Parks, Sparta, N. C	"	87 09
" " 2	W. Rayland, Columbus, Ga	30 d.	51 50
" " 7	Speak & Houck, Cortland, Ala	"	195 27
'68, Oct. 31	Vaughan & Gibson, Bainbridge, Ga	4 m.	115 39
" April 6	Zinn, Aldrich & Co., N. Y	30 d.	66 33
	NOTES.		
'69, M'ch 19	H. Schultz, Richmond, Va	4 m. July 22	137 00
" " 24	J. L. Bartels, Madison, Wis	" " 27	130 58
" " 23	C. C. Davidson, Gainsville, Fla	" " 26	329 23
" " 31	A. W. Barnett, Eufaula, Ala	Aug. 3	100 34
Oct. 21	Coker & Baker, Marianna, Fla	30 d's	129 09
	Scrip of the Atlantic Mutual Insurance Co., issued 1868		1,280 00
	Total		$5,957 30

(5.) The value of the securities, consisting of railroad and State bonds, mentioned in said decree, less the amount which the said Adrian Iselin and Isaac Iselin paid to the several banks to which the same were hypothecated, to redeem the same, was, on May 1st, 1869, $9,223.50, from which date interest is to be calculated thereon, according to
173 said decree, amounting, on September 1st, 1871, principal and interest, to ten thousand seven hundred and twenty-nine dollars and ninety-nine cents.

(6.) The sum of $1,900 and interest from May 1st, 1869, to and including September 1st, 1871, awarded by said interlocutory decree, is $2,210.82.

(7.) The amount of money received by the said Adrian Iselin and Isaac Iselin, from the collateral securities, to the amount of about $72,000, mentioned in the pleadings and proofs, and in said decree, is $65,150.83.

(8.) The charges and expenses allowed to the said Adrian Iselin and Isaac Iselin, by the said decree, in respect to such last-mentioned collections, is $1,611.85.

(9.) The balance of such receipts, deducting said expenses, is $63,538.98. Interest thereon to September 1st, 1871, is $8,932.02.

(10.) The debts, to secure which the said collaterals were so received amount to $61,000 principal, with interest to September 1st, 1871, amounting to $9,241.92.

(11.) The surplus of said money in the hands of said Adrian Iselin and Isaac Iselin, after making the said deductions, is $2,229.08.

(12.) There also remains in the possession of the said Adrian Iselin and Isaac Iselin the following notes and accounts of the said last-mentioned collaterals:

OPEN ACCOUNT.

Date.	Names.	Maturity.	Amount.
'69, Mch. 18	C. C. Brown, Milwaukee, Wis	4 m.	$276 75
" 20	Coker & Baker, Marianna, Fla	"	342 28
" 2	Epstein & Einstein, Savannah, Ga	"	690 63
" 27	G. Hoffman, Florence, S. C	"	112 00
" 12	E. Manes, Savannah, Ga	"	214 49
" 3	Saloskine & Bro's, Newman, Ga	"	282 68
" 24	S. Witherow, Rockford, Ill	"	487 00
174	NOTES.		
'69, Mch, 5	S. W. Barnett, Eufaula, Ala	4 m. July 8	291 40
" 5	T. W. Kendall, Ansonville, N. C	" " 8	478 68
" 12	Tobin & Mosely, Laurence, S. C	" " 15	68 69
" 15	J. J. Whitehurst, Washington, N. C	" " 18	616 28
" 18	S. Franklin & Co., Elverton, Ga	" " 21	457 76
" 24	Murrill & Stoddard, Tuscumbia, Ala	" " 27	92 65
April 2	J. M. Ellis & Bro's, Chic'mga, Ten	" Aug. 5	307 82
" 7	W. M. Peebles, Dawson, Ga	" " 10	663 30
" 15	R. H. Norfolk, Charleston, Ill	" " 18	1,338 13
Mch, 16	S. A. Broyles, Broylesville, Tenn	6 m. Sep. 19	
	Amount $350 }		
	Less paid receiver 150 }		200 00
	Total		$6,920 54

(13.) The several sums awarded by said interlocutory decree amount to sixty thousand two hundred and forty-six dollars and forty-five cents, with interest on $53,430.79 thereof from September 1st, 1871.

Dated New York, September 1, 1871.

HENRY W. CLARK,
Attorney and Solicitor for Defendants Iselin.
CHARLES H. SMITH,
Attorney and Solicitor for Plaintiff.

After hearing Henry W. Clark, esq., for the defendants Adrian Iselin and Isaac Iselin, and Charles H. Smith, esq., for the plaintiff:

It is ordered, adjudged, and decreed, that the plaintiff recover of the defendants Adrian Iselin and Isaac Iselin the several amounts, as mentioned in Sections 3, 5, and 6, of said stipulation, amounting to the sum of fifty-eight thousand and seventeen dollars and thirty-seven cents, with interest on $51,201.71 thereof from the first day of September, 1871, amounting at the date of this decree to $59,331.55.

Also the sum of $2,229.08, mentioned in Section 11, of said stipulation, with interest from September 1, 1871, amounting at the
175 date of this decree to $2,286.27, and also $370.32 costs, amounting in all at the date of this decree to sixty-one thousand nine hundred and eighty-eight dollars and fourteen cents, and that the plaintiff have execution therefor; and that the defendants Adrian Iselin and

Isaac Iselin deliver to the plaintiff, on demand, on their attorney being served with a copy of this decree, the promissory notes and assignments of the scrip and accounts, mentioned in Sections 4 and 12, of said stipulation, and in default thereof, on filing an affidavit thereof, that an attachment as for contempt issue against them to compel them so to do.

And it is further ordered, adjudged, and decreed, that the said money hereby adjudged to be paid by the defendants Adrian Iselin and Isaac Iselin, be paid by them into the Bank of New York National Banking Association, to the credit of the assignee in the said bankruptcy, or if paid to the marshal, on execution, that the same be paid by him into the said bank to the credit of said assignee, unless the court shall give different directions.

And it is further ordered, adjudged, and decreed, that the said Adrian Iselin and Isaac Iselin shall not be allowed to prove in the said bankruptcy the debt in payment of which the money, notes, accounts, securities, and property, in Sections 1, 2, 3, 4, 5, and 6, of said stipulation mentioned, were taken; that is to say, the judgment of fifty-four thousand one hundred dollars, set forth in the bill of complaint in this cause, or the debt for which the same was recovered or confessed. And it is further ordered, adjudged, and decreed that in all other respects than hereby above adjudged the prayer of the plaintiff's bill be denied.

(Signed) SAM'L BLATCHFORD.

(Endorsed:) Filed January 12, 1872.

176 United States district court for the southern district of New York. In equity.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. Dibblee and others, appellants,
against
ADRIAN ISELIN, ISAAC ISELIN, HENRY E. DIBBLEE, David P. Bingley, John J. Krauss, respondents.

Take notice, that the above-named appellant, conceiving himself aggrieved by so much of the decree, dated January 12, 1872, in the above-entitled action, as adjudges that the prayer of the plaintiff's bill be denied in the respects therein mentioned, that is to say, from so much as adjudges the title of the said Adrian Iselin and Isaac Iselin to certain of the notes, accounts, securities, and property assigned to them by the bankrupts not to be invalid as adjudged by the interlocutory decree, filed July 31, 1871, and from so much as allows to the said Adrian Iselin and Isaac Iselin the sums amounting to $70,241.92 mentioned in Section 10 of the stipulation in said final decree set forth, and from so much as denies or disallows the plaintiff's claim to recover the sums amounting
177 to $47,784.51, and the sum of $7,944.88, and the sums amounting to $20,000, besides interest, and in which several respects the prayer of the bill is denied; and the plaintiff claims an appeal, and does appeal from the said decree in the above particulars, and because the same should have adjudged that the said plaintiff recover the said sums and interest, and should have adjudged and decreed that the said Adrian Iselin and Isaac Iselin should not be allowed to prove in the said bankruptcy the debts in security for, or payment of, which the said securities and moneys in said bill and decree mentioned were received or taken; and it is intended to seek a new decision on the facts

in so far as the said decree, with regard to the same, is appealed from as above specified.

Dated New York, Jan. 12, 1872.

CHARLES H. SMITH,
Att'y and Solicitor for Plaintiff.

To GEORGE F. BETTS, Esq.,
Clerk U. S. district court.
HENRY W. CLARK, Esq.,
Att'y for Defendants
Adrian Iselin and Isaac Iselin.
R. W. TOWNSEND, Esq.,
Att'y for Henry E. Dibblee.
S. E. CHURCH, Esq.,
Att'y for Bingley and Krauss.

Know all men by these presents, that we, James R. Clark, junior, and W. J. Pollock, are held and firmly bound unto Adrian Iselin and Isaac Iselin, in the sum of five hundred dollars, to be paid to the said Adrian Iselin and Isaac Iselin, their executors, administrators, or assigns, for the payment of which well and truly to be made, we bind our-
178 selves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twelfth day of January, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, the said James R. Clark, junior, as assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts, as appellant, has appealed to the circuit court of the United States for the southern district of New York, in the second circuit court, from a decree of the district court of the United States for the said southern district, bearing date the twelfth day of January, 1872, in a suit in which the said James R. Clark, junior, as such assignee, is complainant, and the said Adrian Iselin and Isaac Iselin and the said bankrupts are defendants:

Now, therefore, the condition of this obligation is such, that if the above-named appellant, James R. Clark, junior, assignee, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against him, as such appellant therein, if he shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

JAMES R. CLARK, JR. [L. S.]
W. J. POLLOCK. [L. S.]

Sealed and delivered, and taken and acknowledged, this 16th day of January, 1872, before me.

I. SPENCER SMITH,
Notary Public, N. Y. City.

179 UNITED STATES OF AMERICA,
Southern District of New York, ss:

W. J. Pollock, being duly sworn, doth depose and say, that he resides in the southern district of New York, and is a holder therein at No. 590 Fifth Avenue, New York City; that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

W. J. POLLOCK.

Sworn to this 13th January, A. D. 1872, before me.
(NOTARIAL SEAL.) I. SPENCER SMITH,
Notary Public N. Y. City.

This bond approved as to form and amount and sufficiency of surety.
Dated New York, January 16, 1872.
(Signed) SAM'L BLATCHFORD,
District Judge.
HENRY W. CLARK,
Attorney for Def'ts Iselin.

180 District court of the United States for the southern district of New York.

JAMES R. CLARKE, JR., ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts,
against
ADRIAN ISELIN, ISAAC ISELIN, AND THE SAID bankrupts.

To the honorable the circuit court of the United States for the southern district of New York in the second circuit.

The petition of appeal of James R. Clark, junior, above-named complainant in the above-entitled action, respectfully showeth that on or about the 12th day of October, 1869, the bill of complaint in the above-entitled action was duly filed in the office of the clerk of the district court of the United States for the southern district of New York. That thereafter the defendants Adrian Iselin and Isaac Iselin duly appeared in said action by Henry W. Clark, their attorney and solicitor; that the answer of the defendants Adrian Iselin and Isaac Iselin to the said bill was duly filed in the said clerk's office on or about the fourth day of December, 1869; that on or about the 13th day of January, 1870, an order to amend the said bill and answer was duly made and entered in said clerk's office; that on or about the 14th day of January, 1870, the rep-
181 lication of the plaintiff was duly filed in said clerk's office; that, by order duly entered, dated March 5, 1870, the said bill was taken as confessed against the said bankrupts; that the action being thus at issue, on or about the 19th day of March, 1870, an order was duly entered in said clerk's office, by which said order James Betts Metcalfe, esq., was duly appointed examiner, in accordance with the rules of this court, to take the testimony in said action, and the taking of such testimony on behalf of both parties having been closed, and the report of the said examiner duly filed in said clerk's office, the said action was, on or about the 13th day of May, 1871, heard in the district court aforesaid, and thereafter, on or about the 3d day of June, 1871, a decision was rendered in said action, and thereafter, and on or about the 31st day of July, 1871, an order was duly made and entered, amending the said bill and answer; and on or about the 31st day of July, 1871, an order or decree in said action was duly made, entered, and filed in the office of the said clerk of the said district court of the United States for the southern district of New York, wherein and whereby it was ordered, adjudged, and decreed, among other things, that, as to the bills receivable, accounts, and assets, alleged in the said bill of complaint to have been

transferred to said Adrian Iselin and Isaac Iselin by the bankrupts in March and April, 1869, as collateral security for indebtedness or liability of the bankrupts to the said Adrian Iselin and Isaac Iselin, amounting to the principal sums of sixty-nine thousand dollars or thereabouts, and in respect to which it is admitted by the answer that such property, to the amount of about seventy-two thousand dollars was so transferred, and alleged therein that the said transfer was to replace other securities, as therein alleged, the title of the said Adrian Iselin and Isaac Iselin was not invalid as against the plaintiff, but that the said Adrian Iselin and Isaac Iselin were liable to account to the plaintiff for the
182 same after paying the debts, to secure which the same were so received, and all proper charges therein, including the expenses of the accounts thereby directed in respect thereto; in all which this petitioner claims there was error.

And it was further ordered, adjudged, and decreed that the master therein named take and state an account as therein specified, provided that if the solicitor of the plaintiff and of the defendants Iselin should file a stipulation dispensing with the said reference, and agreeing upon the amount due, and other relief to be granted to the plaintiff, then that the plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount, and have the relief specified in such stipulation, together with the costs aforesaid; and that such stipulation might be made for the sole purpose of dispensing with a reference, and should not prejudice the rights of either party on any appeal from said decree; and thereupon the said solicitors did sign and file a stipulation dated September 1, 1871, to which reference is hereby made as if fully inserted herein, and by section 10 of which stipulation it appears that the amount so allowed to the said Adrian and Isaac Iselin is $61,000, principal and interest to the date of said stipulation, September 1, 1871, amounting to $9,241.92, and amounting in all, principal and interest, to $70,241.92.

And it was further ordered, adjudged, and decreed, that in all other respects than in the said interlocutory decree adjudged, the prayer of the said bill of complaint be denied.

And thereupon a final decree was entered and filed in said clerk's office, January 12, 1872, to which reference is hereby made as if fully inserted herein, wherein it was adjudged as to the said $70,241.92, as in the said interlocutory decree adjudged as above alleged, and wherein and in other respects, as hereinafter alleged, this petitioner claims there was error; and this appellant, for these and other reasons, appeals to the next circuit court to be held in said district, from so much of the said final decree entered January 12, 1872, as adjudges the title of the
183 said Adrian Iselin and Isaac Iselin to be not invalid, and that they are entitled to be paid the debts to secure which the said property was received, and the charges and expenses as in said decree mentioned, and from so much as adjudged that the said Adrian Iselin and Isaac Iselin are entitled to prove their debts, or any deficiency in the said bankruptcy; and from so much of said decree as denies the prayer of the said bill in the respects thereby prayed as to the several sums of money alleged in said bill to have been paid, and property alleged in said bill to have been conveyed or transferred by the bankrupts to the said defendants, Adrian Iselin and Isaac Iselin, contrary to the provisions of the said bankrupt act, to wit, the sum of $70,241.92, mentioned in Section 10 of said stipulation and in said final decree, and the sums amounting to $47,784.51 paid for the notes mentioned in the Schedule A, annexed to the answer of the said defendants Iselin, and the sum of $7,944.88, alleged in the bill to have been paid on or about April 8,

1860, and the sums amounting to $20,000, besides interest, alleged in said bill to have been paid March 23, 29, April 2, 6, and 30, 1869; and in the said appeal he intends to have the said cause heard anew in the respects appealed from upon the same papers and proofs, and to seek a new decision on the facts.

And he prays that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed in so far as the same is appealed from as above set forth, and that the prayer of the said bill be granted in the respects above specified, and that the said defendants, Adrian Iselin and Isaac Iselin, be adjudged to pay to the plaintiff the amounts allowed to them by the said decree, with interest, so far as hereby appealed from, and that they be precluded from proving their debts, to secure or pay which the said money and property was transferred or paid to or received by the said Adrian Iselin and
184 Isaac Iselin, as alleged in the said bill, and that the said defendants Iselin may be condemned to pay the appellant his cost and charges in the premises.

Dated New York, January 12, 1872.

CHA'S H. SMITH,
Solicitor, and of Counsel for Appellant.

United States district court for the southern district of New York.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts,	
against	In equity.
ADRIAN ISELIN, ISAAC ISELIN, HENRY E. Dibblee, David P. Bingley, and John J. Krauss.	

Take notice that the defendants, Adrian Iselin and Isaac Iselin, claim an appeal, and do appeal from so much of the decree entered and filed in the above-entitled cause, on the 12th day of January, in the year one thousand eight hundred and seventy-two, as orders, adjudges, and decrees that the plaintiff recover of the defendants Adrian Iselin and Isaac Iselin, the several sums due as mentioned in Sections 3, 5, and 6, of the stipulation mentioned and referred to in said decree, and set forth
185 therein, and which was filed in this cause on the first day of January, 1872, amounting to the sum of fifty-eight thousand and seventeen dollars and thirty-seven cents, with interest on $51,201.71 thereof, from the first day of September, 1871, amounting, at the date of said decree, to $59,331.55, and also $370.32 costs, and that the plaintiff have execution therefor, and that the defendants Adrian Iselin and Isaac Iselin, deliver to the plaintiff on demand, on their attorney being served with a copy of the said decree, the promissory notes and assignments of the scrip and accounts mentioned in Section 4 of said stipulation, and in default thereof, on filing an affidavit thereof, that an attachment as for contempt issue against them to compel them so to do.

And the said defendants, Adrian Iselin and Isaac Iselin, further claim an appeal, and do appeal from so much of the said decree as orders, adjudges, and decrees that the said money thereby adjudged to be paid by the defendants Adrian Iselin and Isaac Iselin, be paid by them into the Bank of New York National Banking Association to the credit of the assignee in the said bankruptcy, or, if paid to the marshal on execution,

that the same be paid by him into the said bank to the credit of said assignee, unless the court shall give different directions.

And the said defendants Adrian Iselin and Isaac Iselin, further claim an appeal, and do appeal from so much of the said decree as orders, adjudges, and decrees that the said Adrian Iselin and Isaac Iselin shall not be allowed to prove in the said bankruptcy the debt in payment of which the said money, notes, accounts, securities, and property in Sections 1, 2, 3, 4, 5, and 6, of said stipulation mentioned, were taken, that is to say, the judgment of fifty-four thousand one hundred dollars set forth in the bill of complaint in this cause, or the debt for which the same was recovered or confessed.

186 And it is intended to seek a new decision on the facts in so far as the said decree, with regard to the same, is appealed from as above.

Dated New York, Jan. 16th, 1872.

HENRY W. CLARK,
Att'y and Solicitor for Def'ts Iselin, Appellants.

To GEORGE F. BETTS, Esq.,
Clerk U. S. District Court.
CHARLES H. SMITH, Esq.,
Att'y and Solicitor for Pl'ff, Respondent.

Filed January 16, 1872.

Know all men by these presents that we, Adrian Iselin and Auguste Richard, both of the city, county, and State of New York, are held and firmly bound unto James R. Clark, jr., assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss, in the sum of seventy-five thousand dollars, to be paid to the said James R. Clark, jr., as such assignee as aforesaid, his successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the sixteenth day of January, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas Adrian Iselin and Isaac Iselin, as appellants, have appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the twelfth day of January, 1872, in a suit in which James R. Clark, jr., as assignee as aforesaid, was complainant, against Adrian Iselin, Isaac Iselin, Henry E. Dibblee, David P. Bingley, and John J. Krauss, defendants:

187 Now, therefore, the condition of this obligation is such that if the above-named appellants, Adrian Iselin and Isaac Iselin, shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against them as such appellants therein, if they shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

ADRIAN ISELIN. [L. S.]
AUGUSTE RICHARD. [L. S.]

Sealed and delivered and taken and acknowledged this ninth day of January, 1872, before me.

JAMES BETTS METCALF,
United States Commissioner,
Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Adrian Iselin and Auguste Richard, each for himself being duly sworn, doth depose and say that he resides in the southern district of New York, in the city and county of New York, and that he is worth the sum of one hundred and fifty thousand dollars over and above all his just debts and liabilities.

ADRIAN ISELIN.
AUGUSTE RICHARD.

Sworn to this sixteenth day of January, A. D. 1872, before me.
JAMES BETTS METCALF,
United States Commissioner,
Southern District of New York.

This bond approved as to form and amount and sufficiency of surety. Dated, New York, January 16, 1872.

SAMUEL BLATCHFORD,
District Judge.

Filed January 16, 1872.

188 District court of the United States for the southern district of New York.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts,
against
ADRIAN ISELIN AND ISAAC ISELIN, HENRY E. Dibblee, David P. Bingley, and John J. Krauss.
} In equity.

To the honorable, the circuit court of the United States for the southern district of New York, in the second circuit:

The petition of appeal of Adrian Iselin and Isaac Iselin, above named, two of the defendants in this cause, respectfully showeth:

That on or about the twelfth day of October, 1869, the bill of complaint in the above-entitled cause was duly filed in the office of the clerk of the district court of the United States for the southern district of New York; that thereafter the defendants, Adrian Iselin and Isaac Iselin, duly appeared in said cause by Henry W. Clark, their attorney and solicitor; that the answer of the defendants, Adrian Iselin and Isaac Iselin, to the said bill was duly filed in said clerk's office
189 on or about the fourth day of December, 1869; that on or about the thirteenth day of January, 1870, an order to amend the said bill and answer was duly made and entered in said clerk's office; that on or about the fourteenth day of January, 1870, the replication of the plaintiff was duly filed in said clerk's office; that the cause being thus at issue, on or about the nineteenth day of March, 1870, an order was duly entered in said clerk's office, by which said order James Betts Metcalf, esq., was duly appointed an examiner, in accordance with the rules of this court, to take the testimony in said cause, and the taking of such testimony on behalf of both parties having been closed, and the report of the said examiner duly filed in said clerk's office, the said cause was, on or about the thirteenth day of May, 1871, argued in the

district court aforesaid, and thereafter, and on or about the third day of June, 1871, a decision was rendered in said cause, and thereafter, and on or about the thirty-first day of July, 1871, an interlocutory order or decree in said cause was duly made, entered, and filed in the office of the said clerk of the district court of the United States for the southern district of New York, wherein and whereby it was ordered, adjudged, and decreed, among other things, that it be, and it was thereby, referred to James Betts Metcalf, esq., who was in and by said decree appointed a special master of this court for that purpose, to take and report certain accounts provided to be made in and by said interlocutory order or decree; that in and by said interlocutory order or decree it was further provided that if the solicitors of the plaintiff and of the said Adrian Iselin and Isaac Iselin should file a stipulation dispensing with the said reference and agreeing upon the amount due and other relief to be granted to the plaintiff, that then the said plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount and have the relief specified in such stipulation, together with costs, and that he have execution therefor, which stipulation should be
190 made for the sole purpose of dispensing with a reference and should not prejudice the rights of either party on any appeal from said decree. That subsequently an appeal was taken by both the plaintiff and the defendants Iselin, from the said interlocutory decree, which appeals were dismissed for irregularity; that pursuant to the provisions of the said interlocutory decree, and without prejudice to the right of either party on appeal, the stipulation in said decree provided to be filed has been made and entered into and was duly filed in this cause on the first day of January, 1872; that on the twelfth day of January, 1872, a final order or decree was made, entered, and filed in this cause, in the office of the clerk of the said district court, wherein and whereby it was among other things ordered, adjudged, and decreed that the plaintiff recover of the defendants, Adrian Iselin and Isaac Iselin, the several sums due as mentioned in Section' 3, 5, and 6 of said stipulation amounting to the sum of fifty-eight thousand and seventeen dollars and thirty-seven cents, with interest on fifty-one thousand two hundred and one dollars and seventy-one cents thereof, from the first day of September, 1871, amounting, at the date of said decree, to fifty-nine thousand three hundred and thirty-one dollars and fifty-five cents, and also three hundred and seventy dollars and thirty-two cents costs, and that the plaintiff have execution therefor, and that the defendants, Adrian Iselin and Isaac Iselin, deliver to the plaintiff, on demand, on their attorney being served with a copy of this decree, the promissory notes and assignments of the scrip and accounts mentioned in section
4 of said stipulation, and in default thereof, on filing an affidavit thereof, that an attachment as for contempt issue against them to compel them so to do. And in and by the said final decree it was further ordered, adjudged, and decreed that the said money hereby adjudged to be paid by the defendants, Adrian Iselin and Isaac Iselin, be paid by them into the Bank of New York National Banking Associa-
191 tion, to the credit of the assignee in the said bankruptcy; or if paid to the marshal on execution, that the same be paid by him into the said bank, to the credit of said assignee, unless the court shall give different directions.

And in and by the said final decree it was further ordered, adjudged, and decreed that the said Adrian Iselin and Isaac Iselin shall not be allowed to prove in the said bankruptcy the debt in payment of which the said money, notes, accounts, securities and property in Sections 1, 2,

3, 4, 5, and 6 of said stipulation mentioned were taken; that is to say, the judgment of fifty-four thousand one hundred dollars, set forth in the bill of complaint in this cause, or the debt for which the same was recovered or confessed.

And these appellants, for these and other reasons, appeal from so much of the said final decree filed in this cause as aforesaid, on the twelfth day of January, 1872, as is above set forth or referred to; and on the said appeal they intend only to have the said cause heard anew, upon the same papers and proofs, and to seek a new decision on the facts.

And they pray that the record and proceedings may be returned to the said circuit court, and that the said final decree may be reversed in so far as the same is appealed from as above set forth, or that such other order therein be made as to the said circuit court may seem just, and that the appellee may be condemned to pay to the appellants their costs and charges in the premises.

Dated New York, January 16th, 1872.

HENRY W. CLARK,
Attorney and Solicitor for Appellants, 58 Pine Street, N. Y.,
of Counsel.

Filed January 16th, 1872.

192 *Assignment of bankrupt's effects.*

[Form No. 18.]

No. 2465.

In the district court of the United States for the southern district of New York.

IN THE MATTER OF HENRY E. DIBBLEE, DAVID P. BINGLEY, AND JOHN J. KRAUSS, BANKRUPTS. } In bankruptcy.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Know all men by these presents, that James R. Clark, junior, of the city of New York, in said district, has been duly appointed assignee of the estate and effects of the firm of Henry E. Dibblee & Company, and of Henry E. Dibblee, David P. Bingley, and John J. Krauss, members and partners of said firm. Now, therefore, I, Isaiah T. Williams, register in bankruptcy of said district, by virtue of the authority vested in me by the fourteenth section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said James R. Clark, junior, assignee as aforesaid, all the estate, real and personal, of the said John J. Krauss, one of the bankrupts aforesaid, including all the property of whatever kind, of which he was possessed, or in which he was interested, or entitled to have, on the third day of May, A. D. 1869, with all his deeds,
193 books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act.

To have and to hold all the foregoing premises to the said James R. Clark, junior, and his heirs forever; in trust nevertheless for the use

and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed, this ninth day of August, A. D. 1869.

[SEAL OF THE COURT.] I. T. WILLIAMS,
Register in Bankruptcy.

Filed on the 25th day of May, 1870, at 11 o'clock a. m.

I, George F. Betts, clerk of the district court of the United States for the southern district of New York, do hereby certify that the above is a true copy of the original assignment made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the said United States the ninety-fourth.

[L. S.] GEORGE F. BETTS, *Clerk.*

194 By the honorable Samuel Blatchford, judge of the district court of the United States for the south. district of New York, acting as judge of the circuit court of said district.

To James R. Clark, jr., assignee in bankrupt'y of Henry E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts.

Whereas Adrian Iselin and Isaac Iselin have lately appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a final decree lately rendered in the district court of the United States for the southern district of New York, made in favor of you, in respect to certain of the matters and things, monies and securities, claimed in and by the bill of complaint mentioned and referred to in said decree, the said Adrian Iselin and Isaac Iselin having filed the security required by law, you are therefore hereby cited to appear before the said circuit court at the city of New York, on
195 the last Monday of Febr'y next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the said district, the 16th day of Jan'ry, 1872.

SAMUEL BLATCHFORD.

The clerk will enter my appearance for the respondent in the within appeal.

Jan'y 16, 1872.

CHA'S H. SMITH,
Att'y & Sol. for Pl'ff.

(Endorsed:) U. S. circuit court S. D. of N. Y., 2d circuit. In equity. James R. Clark, jr., assignee of Henry E. Dibblee & others, bankrupts, vs. Adrian Iselin & others. Copy citation on appeal. Henry W. Clark, att'y & sol'r for d'f'ts, Iselin, appellants.

I admit due service of the citation, of which the within is a copy.

Jan'y 16, 1872.

CHA'S H. SMITH,
Att'y for Resp'd't.

Filed Jan'y 16, 1872.

196 By the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York, acting as judge of the circuit court for said district.

To Adrian Iselin and Isaac Iselin, and to Henry E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts:

Whereas James R. Clark, junior, assignee of the said bankrupts, has lately appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree *lately* rendered in the district court of the United States for the southern district of New York, made in *the* favor of you, denying in certain *respects* the prayer of the bill therein filed, the said James R. Clark, *junior*, having filed the security required by law, you are therefore hereby cited to appear before the said circuit court at the city of New York, on the last Monday of February next, to do and receive what may appertain to justice to be done in the premises.

197 Given under my hand at the city of New York, in the said district, the 17 day of January, 1872.

SAM'L BLATCHFORD.

198 (Indorsed:) U. S. circuit court, southern district of New York. Ja's R. Clark, jr., appellant, against Adrian Iselin & o'rs, respondents. Citation. Charles H. Smith, appellant's attorney, 243 Broadway, N. Y. Filed Feb'y 23, '72.

199 United States circuit court southern dist. of New York.

JAMES R. CLARK, JR., APPELLANT,
vs.
ADRIAN ISELIN, ISAAC ISELIN, & OTHERS, respondents.

We admit due service of a copy of the notice and petition of appeal of the plaintiff herein and of a copy of the bond filed, and direct the clerk to enter our appearance, respectively, pursuant to the citation issued on such appeal, as attorn*ies*, solicitors, and counsel for the parties for whom we have heretofore appeared in this cause, and we waive the filing of any further bond on such appeal.

Dated New York, Jan'y 17, 1872.

HENRY W. CLARK,
Att'y for Adrian Iselin and Isaac Iselin.
S. E. CHURCH,
Attorney for Bingley & Krauss.
HENRY E. DIBBLEE,
For HENRY E. DIBBLEE.

200 (Endorsed:) U. S. circuit court, south. dist. of New York. James R. Clark, jr., appellant, vs. Adrian Iselin & o's, resp'd'ts. Admission of service and appearances by respondents. Filed Feb'y 23, 1872.

201 Circuit court of the U. S. for the south. dist. of New York, in the second circuit.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY C. Dibblee, David P. Bingley, and John J. Krauss, bankrupts, appellant,
vs.
ADRIAN ISELIN & ISAAC ISELIN, RESPONDENTS, and the said bankrupts.

The clerk of the circuit court of the United States for the southern district of New York, in the second circuit, will please enter my appearance for Adrian Iselin and Isaac Iselin, respondents in the above-entitled action.

Dated New York, Feb'y 23, 1872.

HENRY W. CLARK,
Attorney for Adrian Iselin and Isaac Iselin, Resp'd'ts.

To KENNETH G. WHITE, Esq.,
Clerk U. S. Circuit C't, S. D. of N. Y.

202 U. S. circuit court S. D. of N. Y., in the second circuit.

James R. Clark, jr., assignee of Henry E. Dibblee and others, bankrupts, appellant, vs. Adrian Iselin and Isaac Iselin, resp'd'ts, and the said bankrupts. Appears for respondents, Henry W. Clark, att'y for Adrian Iselin and Isaac Iselin, resp'd'ts.

Filed Feb'y 23, 1872.

203 At a stated term of the circuit court of the United States of America for the southern dist. of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Monday, the thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy-two—

Present, the honorable Lewis B. Woodruff, circuit judge.

JAMES R. CLARK, JR., ASSIGNEE, &C., APPELlant,
vs.
ADRIAN ISELIN, APPELLANTS & RESP'D'TS.

The above-entitled cause coming on for argument on appeal from the judgment of the district court of the U. S. for the S. D. N. Y., Mr. Charles H. Smith is heard in behalf of the complainant Clark, assignee.

204 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the fourteenth day of May, in the year of our Lord one thousand eight hundred and seventy-two—

Present, the honorable Lewis B. Woodruff, circuit judge.

JAMES R. CLARKE, JR., ASSIGNEE, &C., APP'L'T,
vs.
ADRIAN ISELIN, APP'L'T & RESP'D'TS.

The above-entitled cause coming on for further argument pursuant to

the adjournment of the 13th inst., Mr. C. H. Smith continues his argument in behalf of the complainant; Mr. Henry W. Clark is heard
205 on behalf of the defendants Iselin; Mr. Stephen P. Nash argues on behalf the defendants Iselin; Mr. Smith is heard in reply.
Cur. adv. vult.

206 At a circuit court of the United States for the southern district of New York, held at the city of New York, November twenty-fifth, 1872—
Present, Hon. Lewis B. Woodruff, judge.

JAMES R. CLARK, JUNIOR, ASSIGNEE OF HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS, bankrupts,
against
ADRIAN ISELIN AND ISAAC ISELIN, AND THE said bankrupts.
} Cross-appeal.

The appeal brought by the complainant, James R. Clark, junior, from portions of the decree of the district court, made in this action, bearing date January 12, 1872, and the appeal brought by the defendants Adrian Iselin and Isaac Iselin, from other portions of the same decree, came on to be heard at the term, 1872, and was argued by counsel,
207 and thereupon upon consideration thereof it was ordered, adjudged, and decreed as follows:
That the said decree so appealed from be in all things affirmed, and that neither party have costs as against the other, but that the said complainant James R. Clark, junior, be adjudged to be paid his costs of the said appeal out of the fund in his hands as assignee of the said bankrupts.
It is further adjudged that the record and proceedings aforesaid be remitted to the district court, and that thereupon further proceedings for the enforcement of the decree appealed be had in the district court; and thereupon both the complainant and the defendants Iselin severally pray an appeal to the Supreme Court of the United States, and such appeals are allowed, and it is certified that the amount in controversy in each of such appeals exceed $2,000.

L. B. WOODRUFF,
Circuit Judge.

208 SIR: Please take notice that the above order will be presented to the honorable Lewis B. Woodruff, judge of this court, for settlement, at the chambers thereof, No. 41 Chambers street, New York City, on Monday, November 25, 1872, at 10½ o'clock a. m.
Dated New York, November 22, 1872.
Yours, &c.,

CHA'S H. SMITH,
Pl'ff's Att'y.

To HENRY W. CLARK, Esq.,
Def'ts' Att'y.

Due service admitted of a copy of the above proposed order, & of settlement.
Dated New York, November 22, 1872.

HENRY W. CLARK,
Att'y for Def'ts Iselin.

209 (Indorsed:) U. S. circuit court. James R. Clark, junior, assignee, against Adrian Iselin & others. Decree. Cha's H. Smith, solicitor compl't. Filed Nov. 25, 1872.

Proceedings in the within case stayed for ten days after the entry of this decree to enable the defendants to perfect *his* appeal.

L. B. WOODRUFF,
Circuit Judge.

210 Supreme Court of the United States.

JAMES R. CLARK, JUNIOR, ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts, appellants,
against
ADRIAN ISELIN, ISAAC ISELIN, IMPLEADED with the said bankrupts, respondents.

To the honorable the Supreme Court of the United States:

The appeal of James R. Clark, junior, above-named plaintiff in the above-entitled action, respectfully showeth that on or about the 12th day of October, 1869, the bill of complaint in the above-entitled action was duly filed in the office of the clerk of the district court of the United States for the southern district of New York; that thereafter the defendants, Adrian Iselin and Isaac Iselin, duly appeared in said action by Henry W. Clark, their solicitor; that the answer of the de-
211 fendants, Adrian Iselin and Isaac Iselin, to the said bill, was duly filed in the said clerk's office on or about the fourth day of December, 1869; that on or about the 13th day of January, 1870, an order to amend the said bill and answer was duly made and entered in said clerk's office; that on or about the 14th day of January, 1870, the replication of the plaintiff was duly filed in said clerk's office; that by order duly entered dated March 5, 1870, the said bill was taken as confessed against the said bankrupt; that the action being thus at issue, on or about the 19th day of March, 1870, an order was duly entered in said clerk's office by which said order James Betts Metcalf, esq., was duly appointed examiner in accordance with the rules of the said court to take the testimony in said action, and the taking of such testimony on the behalf of both parties having been closed, and the report of
212 the said examiner duly filed in said clerk's office, the said action was on or about the 13th day of May, 1871, heard in the district court aforesaid, and thereafter and on or about the 3d day of June, 1871, a decision was rendered in said action, and thereafter and on or about the 31st day of July, 1871, an order was duly made and entered amending the said bill and answer, and on or about the 31st day of July, 1871, an order or decree in said action was duly made, entered, and filed in the office of the said clerk of the said district court, wherein and whereby it was ordered, adjudged, and decreed among other things that as to the bills receivable, accounts, and assets alleged in the said bill of complaint to have been transferred to the said Adrian Iselin and Isaac Iselin, by the bankrupts, in March and April, 1869, as collateral security for in-
debt'ness or liability of the bankrupts to the said Adrian Iselin
213 and Isaac Iselin, amounting to the principle sum of sixty-one thousand dollars or thereabouts, and in respect to which it is admitted by the answer that such property to the amount of about seventy-two thousand dollars was so transferred, and alleged therein

that the said transfer was to replace other securities, as therein alleged, the title of the said Adrian Iselin and Isaac Iselin was not invalid as against the plaintiff, but that the said Adrian Iselin and Isaac Iselin were liable to account to the plaintiff for the same after paying the debts to secure which the same were so received, and all proper charges thereon, including the expenses of the accounting thereby directed in respect thereto, in all which this petition claims there was error.

And it was further adjudged and decreed that the master therein named take and state an account as therein specified, pro-
214 vided that if the solicitor of the plaintiff and of the defendants Iselin should file a stipulation dispensing with the said reference, and agreeing upon the amount due, and other relief to be granted to the plaintiff, then that the plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount, and have the relief specified in such stipulation, together with the costs aforesaid, and that such stipulation might be made for the sole purpose of dispensing with a reference, and should not prejudice the rights of either party on any appeal from said decree; and thereupon the said solicitors did sign and file a stipulation, dated September 1, 1871, to which reference is hereby made, as if fully inserted herein, and by Section 10 of which stipulation it appears that the amount so allowed to the said Adrian and Isaac Iselin is $61,000, principal and interest, to the date of said stipulation, September 1, 1871, amounting to $9,241.92, and amounting in all,
215 principal and interest, to $70,241.92.

And it was further ordered, adjudged, and decreed that in all other respects than in the said interlocutory decree adjudged the prayer of the said bill of complaint be denied. And thereupon a final decree was entered and filed in said clerk's office, January 12, 1872, to which reference is hereby made as if fully inserted herein, wherein it was adjudged, as to the said $70,241.92, as in the said interlocutory decree adjudged, as above alleged, and wherein and in other respects, as hereinafter alleged, this petitioner claims there was error; and this appellant, for these and other reasons, did appeal to the then next circuit court to be held in said district, from as much of the said final decree, entered January 12, 1872, as adjudged the title of the said Adrian Iselin and Isaac Iselin to be not invalid, and that they are entitled to be
216 paid the debts, to secure which the said property was received, and the charges and expenses, as in said decree mentioned, and from so much as adjudges that the said Adrian Iselin and Isaac Iselin are entitled to prove their debts, or any deficiency in the said bankruptcy, and from as much of the said decree as denies the prayer of the said bill in the respects thereby prayed, as to the several sums of money alleged in said bill to have been paid, and property alleged in said bill to have been conveyed or transferred by the bankrupts to the said defendants, Adrian Iselin and Isaac Iselin, contrary to the provisions of the said bankrupt act, to wit, the sum of $70,241.92, mentioned in Section 10 of said stipulation and in said final decree, and the sums, amounting to $47,784.51, paid for the notes mentioned in the Schedule A, annexed to the answer of the said defendants Iselin, and the sum of $7,944.88
217 alleged in the bill to have been paid on or about April 8, 1869, and the sums, amounting to $20,000, besides interest, alleged in said bill to have been paid March 23, 29, April 2, 6, and 30, 1869.

And thereupon, afterwards, on the 14 day of May, 1872, the said appeal was heard by counsel of both parties before the Hon. Lewis B. Woodruff, judge of the said circuit court, and afterwards a decree, bearing date November 25, 1872, was duly made and entered upon the said

209 (Indorsed:) U. S. circuit court. James R. Clark, junior, assignee, against Adrian Iselin & others. Decree. Cha's H. Smith, solicitor compl't. Filed Nov. 25, 1872.

Proceedings in the within case stayed for ten days after the entry of this decree to enable the defendants to perfect *his* appeal.

L. B. WOODRUFF,
Circuit Judge.

210 Supreme Court of the United States.

JAMES R. CLARK, JUNIOR, ASSIGNEE OF HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS, bankrupts, appellants,
against
ADRIAN ISELIN, ISAAC ISELIN, IMPLEADED with the said bankrupts, respondents.

To the honorable the Supreme Court of the United States:

The appeal of James R. Clark, junior, above-named plaintiff in the above-entitled action, respectfully showeth that on or about the 12th day of October, 1869, the bill of complaint in the above-entitled action was duly filed in the office of the clerk of the district court of the United States for the southern district of New York; that thereafter the defendants, Adrian Iselin and Isaac Iselin, duly appeared in said action by Henry W. Clark, their solicitor; that the answer of the de-
211 fendants, Adrian Iselin and Isaac Iselin, to the said bill, was duly filed in the said clerk's office on or about the fourth day of December, 1869; that on or about the 13th day of January, 1870, an order to amend the said bill and answer was duly made and entered in said clerk's office; that on or about the 14th day of January, 1870, the replication of the plaintiff was duly filed in said clerk's office; that by order duly entered dated March 5, 1870, the said bill was taken as confessed against the said bankrupt; that the action being thus at issue, on or about the 19th day of March, 1870, an order was duly entered in said clerk's office by which said order James Betts Metcalf, esq., was duly appointed examiner in accordance with the rules of the said court to make the testimony in said action, and the taking of such testimony on the behalf of both parties having been closed, and the report of
212 the said examiner duly filed in said clerk's office, the said action was on or about the 13th day of May, 1871, heard in the district court aforesaid, and thereafter and on or about the 3d day of June, 1871, a decision was rendered in said action, and thereafter and on or about the 31st day of July, 1871, an order was duly made and entered amending the said bill and answer, and on or about the 31st day of July, 1871, an order or decree in said action was duly made, entered, and filed in the office of the said clerk of the said district court, wherein and whereby it was ordered, adjudged, and decreed among other things that as to the bills receivable, accounts, and assets alleged in the said bill of complaint to have been transferred to the said Adrian Iselin and Isaac Iselin, by the bankrupts, in March and April, 1869, as collateral security for indebtedness or liability of the bankrupts to the said Adrian Iselin
213 and Isaac Iselin, amounting to the principle sum of sixty-one thousand dollars or thereabouts, and in respect to which it is admitted by the answer that such property to the amount of about seventy-two thousand dollars was so transferred, and alleged therein

that the said transfer was to replace other secur'ties, as therein alleged, the title of the said Adrian Iselin and Isaac Iselin was not invalid as against the plaintiff, but that the said Adrian Iselin and Isaac Iselin were liable to account to the plaintiff for the same after paying the debts to secure which the same were so received, and all proper charges thereon, including the expenses of the accounting thereby directed in respect thereto, in all which this petition claims there was error.

And it was further adjudged and decreed that the master therein named take and state an account as therein specified, pro-
214 vided that if the solicitor of the plaintiff and of the defendants Iselin should file a stipulation dispensing with the said reference, and agreeing upon the amount due, and other relief to be granted to the plaintiff, then that the plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount, and have the relief specified in such stipulation, together with the costs aforesaid, and that such stipulation might be made for the sole purpose of dispensing with a reference, and should not prejudice the rights of either party on any appeal from said decree; and thereupon the said solicitors did sign and file a stipulation, dated September 1, 1871, to which reference is hereby made, as if fully inserted herein, and by Section 10 of which stipulation it appears that the amount so allowed to the said Adrian and Isaac Iselin is $61,000, principal and interest, to the date of said stipulation, September 1, 1871, amounting to $9,241.92, and amounting in all,
215 principal and interest, to $70,241.92.

And it was further ordered, adjudged, and decreed that in all other respects than in the said interlocutory decree adjudged the prayer of the said bill of complaint be denied. And thereupon a final decree was entered and filed in said clerk's office, January 12, 1872, to which reference is hereby made as if fully inserted herein, wherein it was adjudged, as to the said $70,241.92, as in the said interlocutory decree adjudged, as above alleged, and wherein and in other respects, as hereinafter alleged, this petitioner claims there was error; and this appellant, for these and other reasons, did appeal to the then next circuit court to be held in said district, from as much of the said final decree, entered January 12, 1872, as adjudged the title of the said Adrian Iselin and Isaac Iselin to be not invalid, and that they are entitled to be
216 paid the debts, to secure which the said property was received, and the charges and expenses, as in said decree mentioned, and from so much as adjudges that the said Adrian Iselin and Isaac Iselin are entitled to prove their debts, or any deficiency in the said bankruptcy, and from as much of the said decree as denies the prayer of the said bill in the respects thereby prayed, as to the several sums of money alleged in said bill to have been paid, and property alleged in said bill to have been conveyed or transferred by the bankrupts to the said defendants, Adrian Iselin and Isaac Iselin, contrary to the provisions of the said bankrupt act, to wit, the sum of $70,241.92, mentioned in Section 10 of said stipulation and in said final decree, and the sums, amounting to $47,784.51, paid for the notes mentioned in the Schedule A, annexed to the answer of the said defendants Iselin, and the sum of $7,944.88
217 alleged in the bill to have been paid on or about April 8, 1869, and the sums, amounting to $20,000, besides interest, alleged in said bill to have been paid March 23, 29, April 2, 6, and 30, 1869.

And thereupon, afterwards, on the 14 day of May, 1872, the said appeal was heard by counsel of both parties before the Hon. Lewis B. Woodruff, judge of the said circuit court, and afterwards a decree, bearing date November 25, 1872, was duly made and entered upon the said

appeal, whereby the said decree of the district court was in all things affirmed without costs to either party; which decree, so far as it affirms the said decree of the said district court in the respects in which the said last-mentioned decree is hereinabove claimed to be erroneous, this petitioner claims to be erroneous, and that the amount in contro-
218 versy on this appeal exceeds the sum of two thousand dollars.

The petitioner therefore prays that the record and proceedings aforesaid may be returned to this honorable court, and that the said decrees of the circuit and district courts may be reversed in so far as the same are appealed from as above set forth, and that the prayer of the said bill be granted in the respects in which it was by said decrees denied, and that the said defendants Iselin be adjudged to pay the amounts allowed to them by said decrees, and that they be precluded from proving in the said bankruptcy their debts, to secure or pay which the said money or property was transferred, or paid to, or received by them as alleged in the said bill, and that the said defendants, Iselin, may be condemned to pay this appellant his costs and charges in the premises.

JAMES R. CLARK, JR.,
Assignee.

Dated New York, November 29, 1872.
CHARLES H. SMITH,
Solicitor and Counsel for said Appellant.

219 STATE OF NEW YORK,
Southern District and City and County of New York:

On this 29 day of November, in the year of our Lord eighteen hundred and seventy-two, before me *before me* came James R. Clark, junior, above named, who being by me duly sworn, did depose and say that he has read the foregoing petition subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

220 Know all men by these presents, that we, James R. Clark, junior, and Charles H. Smith, are held and firmly bound unto Adrian Iselin and Isaac Iselin in the sum of five hundred dollars, to be paid to the said Adrian Iselin & Isaac Iseln, their executors, administrators, or assigns, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas the said James R. Clark, junior, as appellant has appealed to the Supreme Court of the United States, from a decree of the circuit court of the United States for the southern district of New York, bearing date the 25th day of November, 1872, in a suit in which the said James R. Clark, junior, was complainant and appellant, and in which the said Adrian Iselin and Isaac Iselin were defendants and respondents, impleaded with Henry E. Dibblee & others:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute said appeal with effect, and pay all damages and costs which shall be awarded against him as such appellant therein, if he shall fail to make said appeal good, then this obli-

gation shall be void; otherwise the same shall be and remain in full force and effect.

JAMES R. CLARK, JR. [L. S.]
CHARLES H. SMITH. [L. S.]

Sealed and delivered, and taken and acknowledged, this 29 day of November, 1872, before me.

22 printed words struck out, and four words interlined before execution.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles H. Smith, above named, being duly sworn, doth depose and say that he resides in the eastern district of New York, and is a freeholder and householder therein, and that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

CHARLES H. SMITH.

Sworn to, this 29 day of Nov., A. D. 1872, before me.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

This bond approved as to form and amount and sufficiency of surety. Dated New York, Nov. 29th, 1872. L. B. WOODRUFF,
Circuit J.

221 (Indorsed:) United States Supreme Court. James R. Clark, jr., against Adrian Iselin & other' respondent'. Bond for damages and costs on appeal. Cha's H. Smith, attorney for appellant. Filed this 29th day of Nov'r, 1872.

(Indorsed:) Supreme Court. James R. Clark, junior, appellant against Adrian Iselin and others, respondents. Appeal. Filed Nov. 29, '72.

222 By the honorable Lewis B. Woodruff, one of the judges of the circuit court of the United States for the southern district of New York in the second circuit.

TO ADRIAN ISELIN & ISAAC ISELIN:

Whereas James R. Clark, junior, has lately appealed to the Supreme Court of the United States from portions of a decree rendered by the judge of the circuit court of the United States for the southern district of New York, made in favor of you in a suit in equity, pending in said circuit court, in which the said James R. Clark, junior, is complainant & appellant, and you are defendants and respondents, impleaded with Henry E. Dibblee, & David P. Bingley, & John J. Kraus, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the third Monday of December term next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

L. B. WOODRUFF,
Circuit Judge.

223 (Indorsed:) Vol. , page . U. S. Supreme Court. James R. Clark, j'r, appellant, vs. Adrian Iselin & others, appellees. Citation on appeal. Filed Dec'r 2nd, 1872. Cha's H. Smith, attorney for appellant. Filed, ent'd, 187 .

Due and timely service admitted of a copy of the within citation on appeal this 30th day of November, 1872.

HENRY W. CLARK,
Per W. L. S.,
Att'y for Def'ts Iselin.

224 Circuit court of the United States for the southern district of New York, in the second circuit.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS, bankrupts,
against
ADRIAN ISELIN, AND ISAAC ISELIN, HENRY E. DIBBLEE, DAVID P. BINGLEY, and JOHN J. KRAUSS.
} In equity.

To the honorable the Supreme Court of the United States:

The petition of appeal of Adrain Iselin and Isaac Iselin, above named, two of the defendants in this cause respectfully showeth:

That this cause was commenced by the filing by the complainant of a bill in equity brought to set aside certain payments and trans-
225 fers of property made by the bankrupts to the defendant's Iselin as invalid under the bankrupt act, and to recover the property and the proceeds thereof.

The answer of the defendants Iselin denies that any of the acts or transactions complained of were invalid under the bankrupt act, recites in detail the transactions between the parties and prays a denial of the prayer of the bill.

That on or about the twelfth day of October, 1869, the bill of complaint in the above-entitled cause was duly filed in the office of the clerk of the district court of the United States for the southern district of New York; that thereafter the defendants Adrian Iselin and Isaac Iselin, duly appeared in said cause by Henry W. Clark, their attorney and solicitor; that the answer of the defendants Adrian Iselin and Isaac Iselin to the said bill was duly filed in the said clerk's office
226 on or about the fourth day of December, 1869; that on or about the thirteenth day of January, 1870, an order to amend the said bill and answer was duly made and entered in said clerk's office; that on or about the fourteenth day of January, 1870, the replication of the plaintiff was duly filed in said clerk's office; that the cause being thus at issue, on or about the nineteenth day of March, 1870, an order was duly entered in said clerk's office, by which said order James Betts Metcalfe, esq., was duly appointed an examiner, in accordance with the rules of said court, to take testimony in said cause; and the taking of such testimony on behalf of both parties having been closed, and the report of the said examiner duly filed in said clerk's office, the said cause was, on or about the thirteenth day of May, 1871, argued
227 in the district court aforesaid; and thereafter, and on or about the third day of June, 1871, a decision was rendered in said cause; and thereafter, and on or about the thirty-first day of July, 1871, an interlocutory order or decree in said cause was duly made, entered,

and filed in the office of the said clerk of the district court of the United States for the southern district of New York, wherein and whereby it was ordered, adjudged, and decreed, among other things, that it be, and it was thereby, referred to James Betts Matcalfe, esq., *by* who was in and by said decree appointed a special master of said court for the purpose, to take and report certain accounts provided to be made in and by said interlocutory order or decree; that in and by said interlocutory order or decree it was further provided that if the solicitors of the plaintiff and of the said Adrian Iselin and Isaac Iselin should
228 file a stipulation dispensing with the said reference and agreeing upon the amount due and other relief to be granted to the plaintiff, that the said plaintiff recover of the said Adrian Iselin and Isaac Iselin the amount, and have the relief specified in such stipulation, together with costs, and that he have execution therefor; which stipulation should be made for the sole purpose of dispensing with a reference, and should not prejudice the rights of either party on any appeal from said decree. That, subsequently, an appeal was taken by both the plaintiff and the defendants Iselin from the said interlocutory decree, which appeals were dismissed for irregularity. That pursuant to the provisions of the said interlocutory decree, and without prejudice to the rights of either party on appeal, the stipulation in said decree provided to be filed was made and entered into, and was duly filed
229 in this cause on the first day of January, 1872; that, on the twelfth day of January, 1872, a final order or decree was made, entered, and filed in this cause, in the office of the clerk of the said district court, wherein and whereby it was, among other things, ordered, adjudged, and decreed that the plaintiff recove' of the defendants, Adrian Iselin and Isaac Iselin, the several sums due, as mentioned in Section' 3, 5, and 6 of said stipulation, amounting to the sum of fifty-eight thousand and seventeen dollars and thirty-seven cents, with interest on fifty-one thousand two hundred and one dollars and seventy-one cents thereof, from the first day of September, 1871, amounting at the date of said decree to fifty-nine thousand three hundred and thirty-one dollars and fifty-five cents; and also, three hundred and seventy dollars and thirty-two cents; and that
230 the plaintiff have execution therefor, and that the defendants, Adrian Iselin and Isaac Iselin, deliver to the plaintiff on demand, on their attorney being served with a copy of this decree, the promissory notes and assignments of the scrip and accounts mentioned in Section 4 of said stipulation, and in default thereof, on filing an affidavit thereof, that an attachment as for contempt, issue against them to compel them so to do; and in and by the said final decree it was further ordered, adjudged, and decreed that the said money thereby adjudged to be paid by the defendants, Adrian Iselin and Isaac Iselin, be paid by them into the Bank of New York National Banking Association to the credit of the assignee in the said bankruptcy, or if paid to the marshal on execution, that the same be paid by him into the said bank to the credit of said assignee, unless the court should give
231 different directions.

And in and by the said final decree it was further ordered, adjudged, and decreed that the said Adrian Iselin and Isaac Iselin should not be allowed to prove in the said bankruptcy, the debt, in payment of which the said money, notes, accounts, securities, and property in Sections 1, 2, 3, 4, 5, and 6, of said stipulation mentioned, were taken, that is to say, the judgment of fifty-four thousand one hundred dollars set forth in the bill of complaint in this cause, on the debt for which the same was recovered or confessed.

And these appellants further show that cross-appeals were duly taken by both the complainant and these appellants from the said final decree of the said district court to the circuit court of the United States for the southern district of New York, in the second circuit; that the
232 said appeals were duly argued before the honorable Lewis B. Woodruff, circuit judge, on or about the fourteenth day of May, one thousand eight hundred and seventy-two, who thereafter rendered his decision affirming the said final decree of the said district court, which decision was duly filed in the office of the clerk of the said circuit court, on or about the second day of October, one thousand eight hundred and seventy-two, and that thereafter, and on or about the twenty-fifth day of November, one thousand eight hundred and seventy-two, a final decree affirming the said final decree of the said district court was duly made by the said circuit court and filed in the office of the clerk of the said circuit court on the twenty-fifth day of November, one thousand eight hundred and seventy-two.

And these appellants claim and allege that the said several de-
233 crees of the said district court were and are erroneous as to so much thereof as is above set forth or referred to, and that the said final decree of the circuit court was and is erroneous in so far as it affirms so much of the said final decree of the said district court as is above set forth or referred to.

And these appellants, for these and other reasons, appeal from the said final decree of the said circuit court, in so far as the same affirms so much of the said final decree of the said district court, filed in this cause as aforesaid, on the twelfth day of January, 1872, as is above set forth or referred to, and on the said appeal they intend only to have the said cause heard anew upon the same papers and proofs, and to seek a new decision on the facts.

234 And they pray that the record and proceedings may be returned to the Supreme Court of the United States; and that the said final decree of the said circuit court may be reversed in so far as the same is appealed from as above set forth, or that such other order herein be made as to the said Supreme Court may seem just, and that the respondent may be condemned to pay to the appellants their costs and charges in the premises.

Dated New York, December 2nd, 1872.

ADRIAN ISELIN.

HENRY W. CLARK, *Solicitor and Counsel for Appellants, Adrian Iselin and Isaac Iselin.*

STATE OF NEW YORK,
Southern District of New York, City and County of New York:

On this second day of December, in the year of our Lord one
235 thousand eight hundred and seventy-two, before me came Adrian Iselin, above named, who being by me duly sworn, did depose and say, that he has read the foregoing petition subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

JOSEPH GUTMAN, JR.,
United States Commissioner Southern District of New York.

(Indorsed:) Circuit court of the United States, southern district
336 of New York, for the second circuit. James R. Clark, jr., assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss,

bankrupts, respondents, against Adrian Iselin and Isaac Iselin, (appellants,) Henry E. Dibblee, David P. Bingley and John J. Krauss. Petition of appeal. Henry W. Clark, solicitor for appellants, 30 Pine st., New York City. Filed Dec. 2, 1872.

237 *Bond for damages & costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts, respondent,
vs.
ADRIAN ISELIN AND ISAAC ISELIN, (APPELLANTS,) Henry E. Dibblee, David P. Bingley, and John J. Krauss.

Know all men by these presents, that we, Adrian Iselin and Augustè Richard, both of the city, county, and State of New York, are held and firmly bound unto the above-named James R. Clark, jr., assignee, in the sum of eighty thousand dollars, to be paid to the said James R. Clark, jr., assignee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the second day of December, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas, the above-named Adrian Iselin and Isaac Iselin, have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States, for the southern district of New York, in so far as the same is adverse to them:

Now, therefore, the condition of this obligation is such, that if the above-named Adrian Iselin and Isaac Iselin shall prosecute such appeal to effect, and answer all damages and costs if they fail to make such appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ADRAIN ISELIN. [L. S.]
AUGUSTÈ RICHARD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 2nd day of Dec'r, 1872, before me.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

238 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Adrian Iselin and Augustè Richard, being severally duly sworn, do depose and say each for himself, that he is worth the sum of one hundred and sixty thousand dollars, over and above all his just debts and liabilities.

ADRIAN ISELIN.
AUGUSTÈ RICHARD.

Sworn to this 2nd day of Dec., A. D. 1872, before me.
JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

Approved as to form and sufficiency of sureties.
L. B. WOODRUFF,
Circuit Judge.

(Indorsed:) Vol. , page . U. S. circuit court, southern district of New York, James R. Clark, jr., assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts, respondent, vs. Adrian Iselin and Isaac Iselin (appellants,) Henry E. Dibblee, David P. Bingley, and John J. Krauss. Bond for damages & costs on appeal. Henry W. Clark, solicitor for appellants Iselin, 58 Pine street, New York City. Filed this 2nd day of Decem'r, 1872.

239 By the honorable Lewis B. Woodruff, one of the jndges of the circuit court of the United States for the southern district of New York, in the second circuit.

To James R. Clark, jr., assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts:

Whereas Adrian Iselin and Isaac Iselin have lately appealed to the Supreme Court of the United States, from a decree rendered by the judge of the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, as to some of its provisions, against the said Adrian Iselin and Isaac Iselin, and have filed the security required by law—

You are therefore hereby cited to appear before the Supreme Court of the United States, at the city of Washington, on the third Monday of December term, 1872, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern
240 district of New York, in the second circuit, the second day of December, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

L. B. WOODRUFF,
Circuit Judge.

I admit due and sufficient service of the within citation.
CHA'S H. SMITH,
Solicitor for Jas. R. Clark, Jr.

Dated NEW YORK, *December 2nd*, 1872

241 (Indorsed:) U. S. Supreme Court. James R. Clark, j'r, assignee of Henry E. Dibblee, David P. Bingley, and John J. Krauss, bankrupts, against Adrian Iselin and Isaac Iselin, Henry E. Dibblee, David P. Bingley, and John J. Krauss. Citation on appeal. Henry W. Clark, solicitor for appellants Adrian Iselin & Isaac Iselin, 58 Pine st., New York City. Filed Dec. 2, 1872.

United States Supreme Court.

JAMES R. CLARK, JUNIOR, APPELLANT,
vs.
HENRY E. DIBBLEE, DAVID P. BINGLEY, AND John J. Krauss, impleaded with Adrian Iselin and Isaac Iselin, respondent.

We waive the issuing or service of any citation herein, and request the clerk to enter our appearance.
Dated New York, December 11, 1872.

HENRY E. DIBBLEE.
D. P. BINGLEY.

Witness:
JOHN M. KINGDOM.

STATE OF NEW YORK,
City & County of New York, ss:

On this twelfth day of December, in the year 1872, before me, personally came John M. Kingdom, subscribing witness to the above instrument, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in the city of New York; that
243 he was acquainted with Henry E. Dibblee and David P. Bingley, and knew them to be the persons described in, and who executed, the said instrument, and that he saw them execute and deliver the same; and that they acknowledged to him, the said John M. Kingdom, that they executed and delivered the same, and that he, the said John M. Kingdom, thereupon signed his name as a witness thereto.
In witness whereof I have hereunto set my hand and affixed my official seal the 12th day of December, 1872.
[L. S.]

CHARLES H. SMITH, JR.,
Notary Public, N. Y. Co.

Filed Dec. 12, 1872.

244 United States Supreme Court.

JAMES R. CLARK, JUNIOR, APPELLANT,
against
HENRY E. DIBBLEE, DAVID P. BINGLEY, AND John J. Krauss, impleaded with Adrian Iselin and Isaac Iselin, respondents.

I waive the issuing or service of any citation herein, and request the clerk to enter my appearance.
Dated New York, December 11th, 1872.

JOHN J. KRAUSS.

Witness:
LEOTTER PRATTA.

(Indorsed:) Sup. Court U. S., 1872, Dec. term. No. 382. Clark, assignee of Dibblee & al., app'ts, vs. Iselin. Wa'ver of citation by J. J. Krauss, & entry of appearance. Filed 8 January, 1873. C. H. Smith, 243 Broadway. Filed Dec. 18, 1872.

(Indorsement on cover:) No. 382. James R. Clark, jr., assignee of Henry E. Dibblee, D. P. Bingley, and J. J. Krauss, bankrupt, appellants, vs. Adrian Iselin and Isaac Iselin; and No. 383, Adrian Iselin & Isaac Iselin, appellants, vs. James R. Clark, jr., assignee of Henry E. Dibblee & al. S. New York C. C. U. S. Filed 23d December, 1872.

SUPREME COURT
OF THE UNITED STATES.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE, D. P. BINGLEY AND J. J. KRAUSS, BANKRUPTS,
Appellant,
vs.
ADRIAN ISELIN AND ISAAC ISELIN.
} No. 102.

ADRIAN ISELIN AND ISAAC ISELIN,
Appellants,
vs.
JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE AND AL.
} Cross Appeal, No. 103.

BRIEF FOR DEFENDANTS.
APPELLEES AND APPELLANTS.

HENRY W. CLARK,
S. P. NASH,
Of Counsel.

NEW YORK:
EVENING POST STEAM PRESSES, 41 NASSAU ST., COR. LIBERTY.
1874.

SUPREME COURT
OF THE UNITED STATES.

JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE, D. P. BINGLEY AND J. J. KRAUSS, BANKRUPTS,
Appellant,
vs.
ADRIAN ISELIN AND ISAAC ISELIN.
} No. 102.

ADRIAN ISELIN AND ISAAC ISELIN,
Appellants,
vs.
JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE AND AL.
} Cross Appeal, No. 103.

BRIEF FOR DEFENDANTS.
APPELLEES AND APPELLANTS.

HENRY W. CLARK,
S. P. NASH,
Of Counsel.

NEW YORK:
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1874.

Supreme Court

OF THE UNITED STATES

JAMES R. CLARK, JR., ASSIGNEE of Henry E. Dibblee, D. P. Bingley and J. J. Krauss, bankrupts, Appellant. *vs.* ADRIAN ISELIN AND ISAAC ISELIN.	No. 102.
ADRIAN ISELIN AND ISAAC ISELIN, Appellants, *vs.* JAMES R. CLARK, JR., ASSIGNEE OF HENRY E. DIBBLEE ET AL.	Cross Appeal. No. 103.

STATEMENT.

This case comes up on appeals by both the plaintiff and the defendants below from a decree in equity made by the Circuit Court in the southern district of New York, affirming a decree of the District Court. The interlocutory decree of the District Court is at pp. 98–102; the final decree at pp. 102–105, and the decree of the Circuit Court at p. 117.

The bill was filed by the assignee in bankruptcy of H. E. Dibblee & Co. to recover certain

assets which the bill charges were received by the defendants, Iselin & Co., from the bankrupts in fraud of the act.

The answer, while admitting substantially the facts alleged in the bill, explains them more fully, and denies that they were contrary to the provisions of, or in fraud of the act.

Abstract of Pleadings.

Bill.	Answer.
Fol. 3. June 2, 1869. Decree in involuntary Bankruptcy: Petition filed Monday, May 3, 1869; August 9, 1869, assignee's deed from Register.	Fol. 16. Admits.
Fols. 4–5. Confession of Judgment dated February 25, 1869, signed by Dibblee, in the firm-name, but without knowledge or consent of Bingley and Krauss. Consideration, $54,100, for "Securities loaned and "advanced February 21, "23 and 25, to be used by "them (bankrupts) in their "business. The said "amount became im- "mediately due at the time "the same were loaned."	Fol. 16. Admits, and alleges that on February 21 and 23, when some of the securities were advanced, confessions of judgment were given for them, which were destroyed when this one was given.
Fols. 6–7. Judgment entered and Execution issued and levied April 30, 1869.	Fols. 16–17. Admits this.
Fol. 7. Judgment claimed to be an extinguishment of the partnership debt	Fols. 17–18. Denies this and claims that this question is not within the

and conversion thereof into individual debt of Dibblee.

Fols. 7–8. The securities became the property of the Bankrupt's firm, and in February, 1869, were pledged to several banks for a loan of about $46,000, and afterwards the Iselins paid the loans to the banks and received the securities; but whether with or without authority from the bankrupts, complainant is ignorant.

Fol. 8. On May 1, 1869, Bankrupts (said Bingley and Krauss, acting under pressure and by duress of said execution, and in ignorance of the above mentioned invalidity thereof and of the extinguishment) made a bill of sale to the Iselins of $47,839.52 of notes and accounts composing all their best and most available receivables, and $1,900 cash, and the Iselins accepted the same and the said securities, and satisfied the judgment.

Fol. 8. The advance of the securities was made by Iselin to enable the bankrupts to borrow the

jurisdiction of the District Court.

Fol. 18. Admits this.

Fol. 18. Alleges that they paid the banks, May 1, 1869, by authority of the Bankrupts, and received from the banks the securities and credited $8,100 on the judgment, being the market value over the loans. But for this they would have levied on the securities.

Fol. 19. Denies the ignorance and misapprehension of their rights by Krauss and Bingley.

Fol. 19. At this time the sheriff was in possession under the execution.

Fol. 19. The bill of sale was made in payment and satisfaction of the balance due on the judgment, the bankrupts believing that the property would not realize its market value at sheriff's sale, and if the bankrupts should be compelled to suspend payment, the creditors would suffer heavy loss.

Fol. 20. Denies this to be the object of the advance of the securities.

money from the banks in order to enable the bankrupts to, and they did apply the same, or in order to enable them to apply, and they did apply, other money to pay a large indebtedness owing by them to the Iselins, of the amount of which the complainant is ignorant.

Fol. 9. In March and April, 1869, or thereabouts, the bankrupts' firm transferred to the Iselins their bills receivable, accounts and assets, to upwards of $61,000, but how much complainant is ignorant, as collateral security for indebtedness of bankrupts' firm, amounting to about $61,000, some portion of which they had collected at the time of filing petition in bankruptcy, and the residue remained in their hands uncollected. Of further particulars complainant is ignorant.

Fol. 20. Denies they did so apply these proceeds as alleged.

Fol. 20. Denies any such understanding, verbal or written, express or implied, but alleges the advance was to enable the bankrupts to raise money to carry on their business.

Fol. 21. Admits such a transfer

to the amount of $72,000 but alleges it was to replace other collaterals.

Sets forth a loan of $61,000, in August, 1868, on collaterals, amounting to $72,000.

That from time to time collaterals were withdrawn but *immediately and simultaneously* replaced by others.

Fol. 22. The notes were renewed, and this continued to the transactions objected to.

Fol. 23. All the securities transferred to the defendants in March and April, 1869, were so transferred in replacement of

Fol. 9. April 8, 1869. —Bankrupts' firm paid to Iselins $7,944.88, for interest on prior indebtedness.

Charges that Dibblee made and delivered the confessions of judgment, and procured and suffered the property to be seized on execution, and made the said several payments to the Iselins, and the bankrupts made
Fol. 10. the bill of sale, and transferred the said receivables to the Iselins within four months before petition filed, with a view to give a preference to Iselins, and if the bankrupts authorized Iselins to take the securities from the banks or made any transfer thereof to them, they did so *with like* in-

other securities which had been pledged as collateral to the loan of August 6th, 1868, or as collateral to the note for $8,000, discounted April 8, 1869, and in each and every instance of withdrawal and replacement, such *withdrawal and replacement were simultaneous.*

Fol. 23. They had collected at the date of the answer, $55,877.16 of the collaterals, and had then $16,200.71 on hand uncollected, nominal value.

Fol. 24. Denies intent by bankrupts to give any *undue, improper, unauthorized or unlawful preference, or any such preference as is contemplated, intended or forbidden* by the act, *or any preference whatever.* Also denies that the bankrupts procured or suffered their property to be seized on execution, or made the bill of sale, or conveyed the receivables, or gave the authority to the defendants to receive the securities from the banks, or made any payments to the defendants, with the like view and intent, or in fraud of, or to evade the

tent, and within said four months.

Fol. 10. That the bankrupts at said several times were insolvent, and acting in contemplation of insolvency, and made said several dispositions of the property with intent to prevent the same coming to their assignee in bankruptcy, and to prevent the same being distributed under said Act in payment of their debts, and to defeat the object of and impair, hinder, impede and delay the operation and effect of the Act and evade the provisions thereof.

That the Iselins at said several times had reason to believe the bankrupts to be insolvent, and to be acting in contemplation of insolvency, and that said dispositions of property were made with the several intents aforesaid, and that a fraud on the Act was intended.

provisions of the act, or to prevent distribution under it, or to in any way impair, hinder, impede or delay its operation and effect.

Fol. 24. Denies that previous to *the entry of judgment*, they had reason to or did believe the bankrupts to be insolvent or acting in contemplation of insolvency.

Denies that they had reason to believe at any time *previous to petition filed*, that the bankrupts intended a fraud upon the act.

Fols. 24–25. Alleges that Adrian Iselin being a partner in Barbey & Co., ad-

vised them to sell Dibblee & Co. goods, and they did so.

Fol. 25. The bankrupts made large payments to other creditors after the confession of judgment was given.

Fol. 10. The bill of sale and payment of $1,900, charged to be fraudulent, because thereby the partnership property was applied to pay Dibblee's individual debt, the firm being insolvent, and the defendants having notice of the fraud.

Fol. 25. Denies this.

Fol. 10. Complainant is ignorant of the nature of the securities mentioned in the confession of judgment, but claims to own them subject to the loans by the banks, and Iselins by paying the loans occupy the position of the banks.

Fol. 25. Denies this.

Fol. 10. Injunction in bankruptcy issued and served on Iselins, May 3, 1869, also provisional warrant.

Fol. 26. Admits this.

Order of July 17, 1869, made under which the marshal delivered $6,510.77 of assets seized by him and claimed by Iselins without prejudice to the complain-

Fol. 26. Admits this, but alleges that a part of the $6,510.77 was Iselins' property and not embraced in the bill.

ant's right to recover the same.

INTERROGATORIES.

Fol. 12. (1.) As to the nature of the securities mentioned in the confession of judgment.

Fol. 12. (2.) How hypothecated.

Fols. 12–13. (3–4.) Whether, when and how Iselins became afterwards possessed of the securities.

Fol. 13. (5.) Particulars of other indebtedness owing to Iselins by the bankrupts, Feb. 25, 1869, and the payment thereof after Feb. 25, 1869.

Fols. 27–28. Sets forth a description of said securities, being railroad and State bonds, the dates of their delivery to the bankrupts, and their market value, respectively, when so delivered.

Fols. 28–29. Sets forth the several loans by the banks, and renewal thereof, until May 1, 1869, $46,000.

Fols. 30–31–32. By repaying the banks on May 1, 1869, and taking the securities by written authority of the bankrupts.

Fols. 32–33. Recapitulates the indebtedness which began August, 1868 (as supra, fol. 21).

Fol. 34. Also gives a list of notes then, Feb. 25, 1869, held by Iselins which they bought in the market.

Schedule A (fol. 38) annexed to answer, $47,784.-51.

Fol. 34. Also $7,753.43 for money lent, no security (paid April 8, 1869, fol. 99). Also $25,000 loaned by Iselins to bankrupts, Jan.

1, 1866, for three years, at the risk of their business.

Fol. 35. Also the $54,100, for which the judgment was confessed.

Fol. 35. The above is all the indebtedness existing Feb. 25, 1869.

Fol. 35–36. All subsequently paid, as set forth, except the $25,000 loaned at the risk af the business.

Fol. 36. No other payments were made on such indebtedness since the time named.

PRAYER OF RELIEF.

Fol. 13. That the title of Iselin & Co. to the said securities, moneys and receivables be adjudged fraudulent and void as against the complainant. And for an accounting and payment, including damages to the estate by loss of debts, &c., resulting from their interference, and for general relief, with costs.

Fol. 37. Defendants pray to be dismissed with their reasonable costs and charges.

Further Statement.

The testimony was taken before an examiner, and the case was heard on pleadings and proofs in the District Court for the Southern District of New York.

The decree of the said District Court sustained the bill in respect to a portion of the property claimed (fols. 163–164), but denied the relief sought as to the residue (fol. 168, &c.)

An accounting having been had pursuant to the directions of the decree, a final decree was entered on the 12th of January, 1872 (fols. 170–175), from which both parties appealed to the Circuit Court.

The cross-appeals were brought to a hearing and argued in the Circuit Court on the 13th and 14th days of May, 1872, and on the 25th day of November, 1872, the decree of the said Circuit Court was entered, in all things affirming the decree of the said District Court.

From this decree of the Circuit Court both parties appeal (Complainants' Petition of Appeal, fols. 210–219; Defendants' Petition, fols. 224–235).

The firm of H. E. Dibblee & Co. was formed in January, 1866, continued in business till May, 1869, and was adjudged bankrupt June 2, 1869, on the petition of creditors filed May 3, 1869.

The defendants, A. Iselin & Co., were bankers, doing business in the city of New York, and as such had various dealings with the firm of H. E. Dibblee & Co. who, from time to time required commercial facilities.

The transactions set forth in the bill and answer and attacked by the bill are of five classes.

(1.) On the 6th of August, 1868, Iselin & Co. discounted the promissory notes of Dibblee & Co. to the amount of $61,000, upon collaterals consisting of bills receivable and other securities belonging to Dibblee & Co., which were deposited with Iselin & Co. The renewal of these discounts, and the change from

time to time of the collaterals, led to an account current of the transactions, which continued down to the spring of 1869.

Of this $61,000, a note of $8,000 was paid off on the 22d of September, 1868, and the collaterals held against it returned. A new loan of the same amount was made on new collaterals on the 8th of April, 1869. The residue of the $61,000, to wit, $53,000, was represented by three notes of $20,000, $15,000 and $18,000, respectively, and their several renewals are stated in the answer (fols. 32, 33). At the time of the bankruptcy all these notes were unpaid, and Iselin & Co. held them and the collaterals which secured them.

The right of Iselin & Co to these securities was sustained by the decrees below (see Interlocutory Decree of the District Court, fol. 168), but they were held to account for any surplus. Sections 7 to 12 of the Final Decree of the District Court (Fols. 173–4), exhibit this account.

From this part of the decree the plaintiff appeals.

(2.) The next class of transactions attacked by the bill related to an amount of $47,784.51, made up of sundry bills payable, issued by Dibblee & Co. to sundry parties, and purchased by Iselin & Co. from the holders. These notes were all deposited by Iselin in bank, and paid in due course, as they matured from time to time, during the months of February and March; 1869 (fol. 35). A list of them forms Schedule A of the answer (fol. 38). These payments were also sustained by the decrees and the plaintiff appeals (fols. 216–217).

(3.) On the 8th of April, 1869, Dibblee & Co. paid to Iselin & Co. $7,944.88, being the principal and interest of certain loans made without security prior to the 30th of November, 1868 (fol. 35). This payment was sustained by the decrees, and the plaintiff appeals (fols. 216–217).

(4.) In March, 1869, Iselin & Co. made several loans

on call to Dibblee & Co. (March 5th, 6th and 8th.) They were repaid in March and April $20,108.52. These payments were sustained by the decrees, and plaintiff appeals (fol. 217).

A loan of $25,000, which Iselin & Co. had made at the risk of the business, appears to remain unpaid.

(5.) The transaction which the decree of the District Court set aside, and as to which the defendants, Iselin & Co., appeal, was the following:

On the 25th day of February, 1869, Dibblee & Co. executed to Iselin & Co. a confes-ion of judgment in the form authorized by the New York Code (fols. 4–5), to secure the sum of $54,100, advanced by Iselin & Co. to Dibblee & Co. Of this amount $17,500 had been advanced on the 21st of February, when a similar confession of judgment was given, and $18,600 on the 23d February, when a like confession of judgment was also given, and $18,000 was advanced on the 24th February. On the 25th February, the two confessions of judgment for $17,500 and $18,600 were destroyed, and one for $54,100 taken for the whole amount (fol. 16). The advances were made by the delivery of negotiable railroad and State bonds belonging to Iselin & Co., of a larger nominal value, but of which $54,100 was the cash value at the time they were delivered to Dibblee & Co. (fols. 27–28).

These securities were advanced to enable Dibblee & Co. to borrow money, and they did, upon depositing these bonds as collateral, get their notes discounted to the amount of $46,000 by the several banks with which they did business (fols. 7, 28–29).

Nothing was done by Iselin & Co. with the confession of judgment executed on the 25th February, until more than sixty days afterwards, when, on the 30th April, 1869, judgment was entered upon it and an execution issued to the sheriff, who levied upon Dibblee & Co.'s stock (fols. 6–7, 16–17). The next day (May 1) Iselin & Co., at the request of Dibblee & Co., paid to

the banks, in money, the amounts for which they held these collaterals, and took up the collaterals and the notes. This operated as a payment of the difference betweeen the notes and the collaterals, and reduced the indebtedness on the judgment by $8,100, the amount of that difference (fol. 18). Then Dibblee & Co. paid a further sum of $1,900 in cash, and transferred to Iselin & Co., in satisfaction of the said judgment and execution, bills receivable and accounts amounting, at their face, to $47,839.52, and the levy was released (fols. 8, 19).

In reference to this transaction, the decision of the District Court was, that the title of Iselin & Co. to the notes and accounts transferred by the bill of sale of May 1st, 1869, and to the $1,900 paid on that day, and to the securities, on the advance of which the confession of judgment was given, was fraudulent under the act, as against the assignee in bankruptcy (the plaintiff), who was held entitled to recover the value of the same, less the amount advanced to the banks on taking up such securities (fols. 163–164).

The District Court also adjudged that Iselin & Co should not be allowed to prove in bankruptcy the debt of $54,100, for which the confession of judgment was given (fol. 164).

The result of this decision is shown by the final decree of the District Court adjudging that Iselin & Co. pay to the plaintiff $59,331.53 (fol. 174), and deliver the securities uncollected (fols. 173-175), and be debarred from proving in bankruptcy the amount so adjudged against them (fol. 175); and it is from the decree of the Circuit Court, in so far as the same affirms these provisions of the said final decree of the District Court, that the defendants Iselin appeal.

(6.) The item of $2,229.08 referred to in the opinion of the circuit judge presents no question on this appeal. It is an amount collected after the filing of the bill, in excess of the debt to them from the collaterals held by Iselin & Co. They never made any claim to this surplus, adverse to the assignee (see

answer, fol. 23), and after the collections had extinguished the indebtedness, they stated an account showing this surplus and the notes still on hand. Fols. 173, subs. (7) to (12). This has been paid, and the notes transferred to the assignee.

POINTS OF THE DEFENDANTS BELOW, APPELLEES IN THIS COURT, IN AFFIRMANCE OF SO MUCH OF THE DECREE BELOW AS IS APPEALED FROM BY THE COMPLAINANT.

I.

The proof fails to establish that any of the transactions attacked by the bill, and which are sustained by the decrees of the District and Circuit Courts, were in fraud of the act, or contrary to its provisions, and the decree below in respect to them should be affirmed.

II.

The securities delivered to Iselin & Co. on the 5th April, 1869, *were to replace others delivered a year before, and entrusted from time to time to the bankrupts for collection. They were therefore not delivered to secure an unsecured debt, nor to give a preference, but simply in continuance of an existing security.*

August 6, 1868, Iselin & Co. discounted Dibblee & Co.'s four notes, amounting in the aggregate to $61,000.

See Statement, Ex. No. 2, pp. 27–29.

At the time of making such discounts Dibblee & Co. transferred to Iselin & Co. certain notes, amounting to $72,170.42, as collateral security for the

loan, at which time there was a distinct understanding between Mr. Iselin and Dibblee & Co., that the former was always to be kept secured for the whole amount, although from time to time the collaterals might be exchanged or replaced by others.

Answer, fol. 21, p. 11.
Handschin's testimony, fols. 107–108, pp. 68–69.

And that there was such an understanding is also shown by the testimony of Bingley and Krauss, two of the firm, both of whom testified that Mr. Iselin was to loan the firm $25,000 at the risk of the business, and further sums not at such risk.

Bingley, fol. 84, p. 55.
Krauss, fol. 91, p. 58.

This agreement or understanding as to Iselin & Co.'s always being covered with collaterals until the loans were paid, was always faithfully carried out.

The securities delivered on the 6th of August, were entrusted the next day to Dibblee & Co., to be collected for account of Iselin & Co., or to be replaced by others. This was done to facilitate the collections and exchanges.

Handschin, fols. 107–108, p. 69.

A separate lot of securities was pledged with each of the four notes.

September 22d, 1868—at maturity—the note for $8,000 was paid, and the securities given as collateral to it were surrendered to Dibblee & Co., and the pledge canceled.

See Statement, Ex. Nos. 1 and 2, pages 24–27.

Up to December 4th, 1868, separate records or ac-

counts of the collaterals for each of the three remaining notes were kept by Iselin & Co.; from that date but one record was kept of all the collaterals.

(See Exhibit, No. 2, page 29.)

On December 4th, 1868, Dibblee & Co. delivered to Iselin & Co. certain notes amounting to $63,240.61, in replacement of others that had been collected.

(Exhibits Nos. 1 and 2, pages 24, 27, 28, 29.)

One of complainants' witnesses, Gates, testifies that these notes given as collateral December 4th, were marked off to Iselin & Co. on Dibblee & Co.'s bill-book.

(Gates' testimony, fol. 48, p. 25.)

Another of complainants' witnesses, Wells, testifies that no notes prior to those given April 5th were found by him marked off to Iselin & Co. on Dibblee & Co.'s books.

(Wells' testimony, fol. 116, p. 73.)

Now this apparent contradiction in the testimony of the two witnesses is easily explained. It is the universal custom of merchants to mark off *in pencil* on their bill-books notes given temporarily as security, and on the return or exchange of such notes the pencil marks are effaced. We have here then the direct testimony of the witness Gates that these securities of December 4th were so marked off to Iselin & Co., and the testimony of the witness Wells, that he found no notes so marked off on Dibblee & Co.'s books prior to those of April 5th; we have, therefore, by these witnesses two things clearly proved: First, that the securities of December 4th were marked off to Iselin & Co.; and, second, inferentially, that those of August 6th, and those given in exchange or replace-

ment of them were marked off in like manner. If this were not so, it could have been readily disproved by complainant, but he introduced no testimony whatever to this effect.

Although the witness Gates testified (fol. 49, p. 25), that when money was collected by Dibblee & Co., on the collaterals given to Iselin & Co. prior to April 5th, 1869, such money was entered regularly in their cash-book, and used in their business, he says further, that a record was kept in another book of the amounts so received (same fol.), which shows conclusively that Dibblee & Co. knew and recognized the fact that they had to account for these collaterals by replacing them with others, and there is no testimony whatever to show that they did not always do so, or that they did not always carry out in good faith the agreement made with Iselin & Co. on the 6th of August. But supposing that Dibblee & Co. had not carried out this agreement in good faith, and had used a portion of the money collected on these notes in their business, without simultaneously replacing them with others, the money so used would have been trust money, the securities for which having been replaced prior to the filing of the petition in bankruptcy, the right of Iselin & Co. to hold such securities was perfect.

The discounts of August 6th were made with a distinct understanding that they were always to be fully covered with collaterals, and they were so covered. The temporary possession of the securities by Dibblee & Co. did not impair the lien of Iselin & Co., and the replacing of the securities entrusted, did not constitute a "preference."

Exhibit No. 2, pp. 27–29) shows numerous instances of withdrawals and replacements of the collaterals from time to time, and demonstrates how faithfully the agreement of August 6th was carried out.

On the 6th August, 1868, the date when the notes were discounted, and the collaterals given to secure their

payment, the indebtedness was beyond question a secured indebtedness; there is nothing in the testimony tending in any way to show that it was not always subsequently covered by collaterals, and that date, August 6th, being nearly ten months previous to the filing of the petition in bankruptcy, the transaction is in no way affected by the act.

The fact that these collaterals were placed in the hands of Dibblee & Co. for the purpose of receiving the money on them as they matured, did not in any manner affect the title of Iselin & Co. to them, or to the proceeds of such of them as were paid to Dibblee & Co. while in the latter's manual possession. If any collections were made by Dibblee & Co., the moneys so collected, unless replaced by other securities, belonged to Iselin & Co., and were their specific property.

"Where promissory notes are pledged by a debtor "to secure a debt, the pledgee acquires a special prop- "erty in them. That property is not lost by their "being re-delivered to the pledgee to enable him to "collect them, the principal debt being still unpaid. "Money which he may collect upon them is the spe- "cific property of the creditor. It is deemed collected "by the debtor in a fiduciary capacity."

White vs. *Platt*, 5 *Denio*, 269.

All the transactions now under consideration were made in entire good faith, and are fully protected by the cases of *Cook* v. *Tullis & Tiffany* v. *Boatman's Institution*, 18 *Wall*, 332, 375.

Although the letters of Iselin & Co. accompanying the re-deposit of collaterals with Dibblee & Co. speak of a "*collection*" of such collaterals for account of Iselin & Co., this is not inconsistent with the terms of the original understanding; and it is clear on the evidence that there was in every instance of withdrawal or collection of collaterals, a simultaneous replacement of others of at least an equal amount on their face.

The securities were collateral to the discounted notes, and until their maturity, no actual money payments were required to be made; accordingly Iselin & Co. did not claim the money, but took in lieu of it the substituted collaterals.

Wells, fols. 111, 112, p. 71 (in answer to question 15); fol. 112, p. 71 (in answer to question 16); fol. 114, p. 72 (in answer to questions 20, 21).

III.

The notes of Dibblee & Co. which Iselin & Co. had purchased in open market ($47,784. 51), *were paid in due course of business, and such payment was in no sense in fraud of the act.*

These notes were purchased, in open market, from September, 1868, to January, 1869, *and were paid at maturity, none of them before*, and there is no reason why Dibblee & Co. should have refused to pay them, while paying, as they did, all their other indebtedness as it matured.

Wells' testimony, fol. 143.

The only ground for attacking the payment of these notes as preferential, was the suggestion that the money raised by means of the confession of judgment, went in some way to pay them. But of this there is not a particle of proof. This money was raised between the 20th and 25th of February, 1869, and went into Dibblee & Co.'s general business, and no connection is shown between it and the payment of the notes in question, which matured at various dates all along from February 24th, to March 25th, 1869.

IV.

As to the payment of the sum of $7,944.88, *April* 8, 1869, *and the aggregate sum of* $20,000, *March* 23*d and* 29*th*, 1869, *and April* 2*d*, 6*th and* 30*th*, 1869.

Answer, fols. 35 *and* 36.

These payments were made in the regular course of business, for loans also made in the regular course of business; they were not made in fraud of the act, and the decree below in respect to them should be affirmed.

V.

As to the deposit of collaterals with Iselin & Co. by Dibblee & Co. to secure the payment of the note for $8,000, *discounted April* 8*th*, 1869.

Answer, fol. 22.

This transaction was also in the regular course of the business of both Dibblee & Co. and Iselin & Co.; it was not, in any sense, in fraud of the act, and the decree below in respect to it should be affirmed.

The securities were given at the time the note was discounted, the bankrupts received full value, and therefore no question of preference arises.

VI.

The proof fails to establish that Iselin & Co., or either member of that firm, had reasonable cause to believe

Dibblee & Co. to be insolvent, or to be acting in contemplation of insolvency, at any time previous to the entry of the judgment, April 30th, 1869, or that they had reasonable cause to believe that a fraud on the act was intended by Dibblee & Co. previous to the filing of the petition.

The complainant claims that on the 5th day of April, 1869, the defendants were without any security whatever for the $53,000 of the discounts of August 6, 1868, then remaining unpaid, and that on that day (April 5th) Dibblee & Co. transferred to them $62,027.34 of notes and open accounts, as collateral security to these discounted notes in fraud of the act, in that, by such transfer, a preference in fraud of the act was given to Iselin & Co. over the other creditors.

The testimony in the case establishes that Iselin & Co. were fully covered with collaterals for these discounts from the time that they originated, and that the moneys collected by Dibblee & Co. on the collaterals temporarily entrusted to them, were, until replaced, the specific property of Iselin & Co., and could be paid over by Dibblee & Co. to Iselin & Co. at any time, and such payment would not have been construed to be a "*preference;*" but had they not been so covered on the 5th of April, the transaction of that date did not, *on the ground of any knowledge on the part of Iselin & Co. of the insolvency of Dibblee & Co., or of any belief on their part that Dibblee & Co. were insolvent, or acting in contemplation of insolvency,* create such a preference as is prohibited by the act.

Now, in order to establish such a preference, it is necessary to prove certain facts with regard to both the debtor and the creditor.

First.—As to the debtor. He must either be bankrupt or insolvent, or contemplate bankruptcy or insolvency; he must make a conveyance or transfer of money or property; he must do this with intent on his

own part to give a preference to the creditor, or to defeat or delay the operation of the act.

Second.—As to the creditor, he must have reasonable cause to believe that a fraud on the act was intended, and that the debtor was insolvent, or acting in contemplation of insolvency.

1. In this present case, admitting, for the argument that the debtors were insolvent when they made the transfer, it is very certain that they did not intend to give, and did not give an improper or illegal "*preference*," or any "*preference*" of any kind, and did not intend to defeat and delay the operation of the act; on the contrary, it is evident, from the testimony, that they had no idea of suspending payment or of becoming bankrupt. They were making preparations for extending their business during the then approaching "season," and two of them, by their own testimony, show that they had no idea but that their house was in as good, substantial condition as it was in unquestioned credit.

Mr. Krauss says (fol. 94, p. 60):

"Up to that time (April 30), I never heard the solvency of our house questioned, nor had I any reason to suppose that it would suspend. *A week or ten days before that Mr. Dibblee had said to Mr. Bingley and myself, that we had a good prospect* for the coming season. Up to the 30th day of April, 1869, I had no reason to suppose that the house was not perfectly solvent."

See, also, Mr. Bingley's testimony (fol. 87, p. 56).

As to any contemplation of failure on Mr. Dibblee's part, or expectation of bankruptcy, his conduct entirely and conclusively disproves it. It is in evidence (Wells' supplementary statement, fol. 98, p. 63) that Mr. Dibblee drew out of the concern, from

January 20th, 1866, to January 1st, 1869, a period of about three years, the sum of $20,541.56, being less than $7,000 a year. Now, it will hardly be contended that this was an undue amount for a man with a family to support, and a respectable position to maintain; on the contrary, it would appear from this statement, that he endeavored to live as economically as possible, and to leave as large an amount as possible to the credit of his "house." It would have been very easy for him, from time to time, to draw out very considerable sums, and secure them with members of his family, or otherwise—a proceeding although by no means to be encouraged or applauded, yet quite usual with men in embarrassed financial circumstances; and while it is not it at all necessary to the defense in this action, to vindicate or express approval of Mr. Dibblee's course in this matter, it is certainly evidence of his entire confidence in the stability of his house.

Mr. Dibblee does not appear to have drawn any money out of the concern from January 1st, 1869, to the time of the filing of the petition and the issuing of the injunction; had he done so, the fact would undoubtedly have been brought out, as Mr. Wells, a professional accountant, made the fullest examination of the bankrupts books.

No actions of any kind are shown on the part of Mr. Dibblee which would appear to prove that he contemplated bankruptcy or deemed himself insolvent. He appears to have done nothing to protect Iselin & Co. He might have made forced sales of his stock, which must have amounted to some $100,000, as it realized, under the most unfavorable circumstances of sale, over $55,000 (fol. 98), and have paid at least a portion of the indebtedness due Iselin & Co.

The complainant's witness, Cordner, testifies, fols. 88 and 89, p. 57, and fol. 90, p. 58, that a few days prior to April 30th, Mr. Dibblee applied to Iselin & Co. for a further loan; now had Mr. Dibblee contemplated bankruptcy, or deemed himself insolvent, he would

hardly have made this application, nor would he have made it had he believed that Mr. Iselin so regarded his position.

II. Now, as to Mr. Iselin, there is nothing in the testimony tending to show that on the 5th day of April, or at any date previous to April 30th, 1869, he had reasonable cause to believe that a fraud on the act was intended, or that the debtors were insolvent, or contemplated insolvency.

The complainant's witness, Wells, testifies that Dibblee & Co. were insolvent on the 1st day of August, 1868, to the extent of at least $75,000, and to a like amount for months previous to that date.

Wells' testimony, fol. 99, p. 64.

So far from any acts of the defendants, subsequent to that date, showing that they had knowledge of any ~~of~~ such insolvency, if it existed, or reasonable cause to suppose that such insolvency existed, or was in contemplation, their whole dealing shows the reverse.

1. Subsequent to that date, Iselin & Co. purchased in the market Dibblee & Co.'s notes to the amount of over $80,000.

(See Ex. No. 17, p. 78.)

2. Subsequent to that date, and so late as April 13th, 1869, the firm of Henry Barbey & Co., in which firm Mr. Adrian Iselin was a special partner, sold goods to Dibblee & Co. upon credit for over $24,000, and the amount due them from Dibblee & Co., at the time of the adjudication in bankruptcy, and proved before the Register, was $8,351.61, one of the largest debts proved.

Wells' testimony, fol. 111, p. 71 and 115, p. 73.

On the 17th day of February, 1869, Dibblee &

Co. owed Henry Barbey & Co. $17,374.68. All of this indebtedness, except $789 97, was represented by notes, none of which were paid until their maturity, and $1,161.07 (being a note for $362.10, and open account for $798.97), was not paid at the time of the adjudication in bankruptcy.

Wells' testimony, fols. 114 and 115, pp. 72 and 73.

Now, admitting that the amount of $1,161.07 was contracted at an earlier date, it is conclusively shown that at least $7,190.55 of the debt due Henry Barbey & Co., and which was proved in bankruptcy, must have been contracted subsequent to February 17th, 1869, and this with the full knowledge of Mr. Iselin.

See answer, fols. 24 and 25, p. 13.

And further than this the whole amount of the indebtedness, due February 17th, and the amount proved in bankruptcy, must have been contracted subsequent to the time when Mr. Wells says Dibblee & Co. were insolvent. According to this testimony, the first note matured February 18th, 1869, and was given for goods purchased six months previously, and at about the same date as the notes; so that all these purchases must have been made subsequent to about the 15th of August.

Wells, fols. 114 and 115, pp. 72 and 73.

Now, Mr. Iselin would not have thus involved himself further with Dibblee & Co. when he did not better his own condition by doing so. All the dealings between them show on the contrary that there had been nothing to excite his suspicion. They paid off a note due defendants for $8,000, September 22d, 1868; and on January 16th, deposited with defendants $20,000, for which they had no immediate use (of this amount $10,000 was drawn out by Dibblee & Co., February 15th, and the remaining $10,000 was not withdrawn until the 17th day of February, 1869).

It cannot be held that Iselin & Co. went on buying Dibblee & Co.'s paper, and advised Henry Barbey & Co. to sell them goods merely for the purpose of keeping up Dibblee & Co.'s credit, for there was no necessity for their doing so. The testimony bearing upon this point introduced by complainant shows most conclusively that Dibblee & Co.'s credit remained unquestioned up to April 30th.

We quote from complainant's witness, Bingley's testimony, fol. 87, p. 56 :

Q. 3. "Do you know, of your own knowledge, of the solvency of the house being questioned up to that time? (April 30th, 1869.)

A. I do not.

Q. 4. Did you ever up to that time hear it questioned?

A. No, sir."

We now quote complainant's witness Krauss' testimony, fol. 94, p. 60 :

"Up to that time (April 30th, 1869), I never heard the solvency of our house questioned, nor had I any reason to suppose that it would suspend."

Both of these witnesses were partners in the house of Dibblee & Co., and inasmuch as they attended to the purchases and sales made by the house, were in constant intercourse with the parties who sold the house goods, and would have been the first to hear any question as to the credit of the house being doubted.

There is no evidence whatever of either brokers or purchasers of paper that Dibblee & Co.'s paper became unsalable, or even sold at higher rates after Iselin & Co. stopped buying it, and yet had such been the fact, complainant's counsel could easily have produced testimony as to this point, inasmuch as a

great many names of dealers in the paper were given in Schedule A, attached to the answer. None of the creditors have been placed on the stand to prove that the credit of Dibblee & Co. was impaired.

The complainant was most energetic in seeking testimony to support this point.

A circular calling for evidence (fols. 104, 105), was issued on the 23d day of May, 1870, nearly eight months after the commencement of this action.

This circular held out as an inducement for the production of testimony, that $150,000 was to be obtained from Mr. Iselin, which amount, together with the assets which passed to the assignee, would pay all the liabilities of the bankrupts and leave a surplus; but notwithstanding this inducement, no one came forward to attack the credit of Dibblee & Co. prior to the time they actually stopped.

How complete is this failure of proof is further shown by the proceedings before the examiner after the defendants' counsel rested his case.

The complainant's counsel then stated that he intended to produce testimony in rebuttal of that offered by the defendants, and asked for an adjournment.

Defendants' counsel objected to any adjournment for such purpose, claiming that the testimony in the case must be considered closed.

This was on February 2d. The examiner decided to allow the complainant's counsel until February 4th to prepare and produce an affidavit, stating, if such be the case, that he intends to offer testimony in rebuttal.

On the adjourned day, the counsel failed to produce such an affidavit, and introduced no testimony in rebuttal; he recalled the witness Wells, and by him put in the two Exhibits, numbered respectively 23 and 24, which are simply transcripts from the books of Dibblee & Co., in no respect varying or rebutting any testimony offered by the defendants, and bearing upon no facts or figures disputed by them.

Fols. 141, 142 and 143, pp. 88 and 89.

The witness Wells, as we have cited, testified that Dibblee & Co. were insolvent on the 6th of August, and for months previous; all the acts of Mr. Iselin show that from that date until the time of the entry of his judgment, he had no "reasonable cause to believe," and did not believe, Dibblee & Co. to be insolvent, or acting in contemplation of insolvency.

It is very clear that, in order to sustain his case, on the theory that Mr. Iselin had reasonable cause to believe, on the 5th of April, that Dibblee & Co. were insolvent, or acting in contemplation of insolvency, it was necessary for the complainant to prove another very important thing, which he has wholly failed to prove, in addition to the other points already discussed, and as to which there is an equal absence of proof.

He must have proved that the pecuniary relations existing between the parties were different, and more likely to arouse the suspicion of Mr. Iselin than they had previously been; this he could not prove, for the fact was not so.

And, in this connection, attention is called to the statement of the loan account on page 85, being Exhibit No. 20, in order to show that the loan account between the parties, in the spring of 1869, did not exceed in amount the same account as it stood in the spring of 1868, and that, consequently, there was nothing in it to excite the suspicions of the defendants.

This Exhibit (No. 20) shows that on the 23d day of March, 1868, Dibblee & Co. owed the defendants $129,154.49 for loans, exclusive of interest; this amount began to be reduced April 14th, but was still $108,400.88 on the 31st of May. Now the largest amount owing by Dibblee & Co. to the defendants, in the spring of 1869, was $127,000, being composed as follows: $61,000, notes discounted; $46,000 borrowed from the banks on the securities loaned, and

$20,000 loaned as per Exhibit No. 18, page 80. On the 30th of April, 1869, the amount of loans due to Iselin & Co. was reduced to $107,000, so there was nothing unusual in the amount.

These amounts do not at all exceed the amounts usually owing for loans by mercantile houses doing a business similar to that of Dibblee & Co.

The books of Dibblee & Co. (see Wells' statement, p. 61) show that the unsecured indebtedness of Dibblee & Co. amounted at the time of their failure to $202,810.72, so that their secured indebtedness amounted to only about one-third of their entire indebtedness, which is certainly less than the average relative amount of secured and unsecured indebtedness of mercantile houses which are obliged to suspend.

We call attention to Exhibit No. 17, p. 78.

It was attempted to show that Iselin & Co. had reasonable cause to believe Dibblee & Co. insolvent, or acting in contemplation of insolvency, so early as January, 1869, inasmuch as they ceased purchasing their paper at that time. Their so ceasing to purchase is fully explained by the testimony of the witness Handschin (fol. 126, p. 79, and fols. 133 and 134, p. 83) ; and in connection with exhibit 17, p. 78, shows further, not only that the defendants purchased a very large amount of Dibblee & Co.'s paper from August, 1868, to January, 1869, and for a period consequently long after Mr. Wells says that they were insolvent; but it also shows that they ceased to buy Dibblee & Co.'s paper only when they were buying none.

As to any inference being drawn from the giving of the confession of judgment, that the defendants must at that time have known, or have had reasonable cause to believe, that Dibblee & Co. were insolvent, or acting in contemplation of insolvency, all that need be said is, that though a confession of judgment given to delay

a pressing creditor, argues a precarious condition, the case is entirely different where it is given as security for value received at the time. A mortgage of a stock of goods made in good faith, and as security for value advanced, is always held entirely legitimate. A confession of judgment for the same purpose is, as being a mere power to take the goods, and not an actual charge upon them, less onerous to the debtor; it implies, not that the debtor is going to fail, but that the help he needs is only temporary.

It is clear that the giving of the confession created no unfavorable impression on the minds of the defendants, for all their actions subsequent to the giving of the confession show an undiminished confidence in the solvency of Dibblee & Co.

VII.

The complainant gave evidence of the relations of Iselin & Co. with Dibblee long before the formation of the last firm of Dibblee & Co., to furnish food for sinister suggestions as to those relations. But they will bear the closest scrutiny.

A prior firm of H. E. Dibblee & Co. was formed as early as January 1st, 1855 (articles, p. 41). This firm failed in 1862, and made a general assignment to one Ezra R. Dibblee, in trust for creditors, with preferences. Iselin & Co. being in the first class for $35,863.45 (pp. 45–47).

On the 25th of May, 1865, the creditors of that firm agreed that the trust should be surrendered, and the assets re-transferred to H. E. Dibblee & Co., Mr. Iselin having, to aid Dibblee, acquired most of the debts (see Assent of creditors, p. 53; Agreement, pp. 42, 43).

The last firm of H. E. Dibblee & Co. was formed the following year (January, 1866), and Mr. Iselin is stated to have then agreed to aid Dibblee to the amount of $25,000 at the risk of the business (fol. 90, p. 58). The only security he had for this, if any, was

from Dibblee, individually, under an assignment (p. 44) of the remnants of the old assets of the prior firm, which had been in process of collection since 1862, "mostly in the Southern States" (p. 54), if, indeed, this assignment is to be considered as applying to this $25,000. He had no security whatever, from the new firm, or upon its assets, and at the time of their failure, Mr. Iselin does not appear to have received anything on account of this $25,000.

These dealings of Iselin with Dibblee, from 1855 to 1866, do show a most liberal, friendly treatment by a large creditor of an embarrassed debtor. Dibblee was put on his feet again in 1866, and his new firm transacted business for three years and four months until May, 1869. They made their payments regularly, acquired a fair credit, and are not shown to have done anything inconsistent with the ordinary course of business. Their sales were at six months credit, and they were accordingly obliged to convert their business paper into money. Iselin & Co. discounted their notes with this paper as collateral, and from time to time bought their paper when it was on sale as other bankers did (p. 20).

They made them short, temporary loans, which were repaid, and when Dibblee & Co., had a surplus of cash, Iselin & Co. took it on deposit. There is nothing in the whole course of the dealing irregular nor unconscionable. The loans made by Iselin & Co., were at legal interest, without commission, and when they bought the business paper of Dibblee & Co., they bought it of the holders at the market price. There was no favoritism to Iselin & Co., and no particular profit to them in the business. Dibblee & Co. went on paying all their liabilities as they matured, until the levy under Iselin & Co's. judgment. There is no evidence that Dibblee & Co. supposed that this would ever be enforced by Iselin & Co., or that Iselin & Co. supposed they would ever be obliged to enforce it, until they had it actually docketed on the 30th of April.

The bankrupt act does not forbid a debtor who has

once failed making the best arrangements he can to start anew. It does not forbid a creditor from being liberal and generous to his debtor; it does not require the debtor to succumb whenever the times become hard; but it permits him to struggle on; justifies his paying as long as he can, if he pays without preference, and as his debts mature; allows him to borrow on security, and protects to the creditor the security on which the loan has been made; and only requires that when the debtor is obliged to give up, he shall make no preferences in fraud of the act.

VIII.

It was claimed by the complainant that the deposit of notes made on the 6th of August, 1868, as security for the $61,000 *then advanced, was an insufficient security, by reason of the character of the assets so deposited, and that the subsequent exchanges of collaterals were collusive for the purpose of improving the character of the security.*

This, if true, would be an exceedingly far-fetched argument for inferring any intent to evade the Bankrupt Act. Iselin & Co. made the loans on the faith of security, and were entitled to sufficient security.

It is to be assumed that when the loan was made in August, 1868, Dibble & Co. deposited what they hoped would be sufficient security. If they were able to strengthen it by better paper, there was no time in 1868 when they had not the entire right to do so. The notes for the $61,000 matured between September and December, 1868 (p. 30), and if they had then been all paid no one could complain; much less is it ground of complaint that the security was improved before the loans were renewed.

IX.

The proofs having failed entirely to support the bill as to any of the transactions sustained by the decrees below, and in respect to which the complainant appeals, such decrees, as to all these transactions, should be affirmed.

POINTS OF THE DEFENDANTS BELOW, APPELLANTS IN THIS COURT, AS TO SO MUCH OF THE DECREE BELOW AS IS APPEALED FROM BY THEM.

The transaction which the decree below set aside, and as to which the defendants Iselin appeal, is set forth in full, in sub. (5), at page 12, of this brief.

I.

A warrant of attorney to confess judgment, executed by one partner for a partnership debt (so stated in the "statement forming part of the 'statement and confession of judgment'"), is binding upon the other partners so as to hold the partnership property.

Leahey *vs.* Kingon, 22 How. Pr., 209.
Van Keller *vs.* Miller, 3 Abb., 375.
Grasser *vs.* Stellwagen, 25 N. Y., 315.

Although this question is put in issue by the pleadings, it is not properly before this court. It was disposed of in the charge to the jury in the proceedings to put Dibblee & Co. into bankruptcy, it being held in those proceedings that the judgment of the State Court must be considered as final, and could not be reviewed by the District Court.

II.

The confession of judgment was not given to secure a pre-existing debt, but to secure a loan made by the defendants to the bankrupts at the time of its execution.

This transaction was a perfectly plain, very simple and legitimate one, and had the bankrupts been then insolvent, and the fact of such insolvency known to the defendants, the judgment would have been perfectly valid, and the defendants entitled at any time to enforce payment under it by execution, levy and sale.

The fact was, however, that at the time of the making and execution of the confession of judgment, the defendants did not believe, and had no reasonable cause to believe that the bankrupts were bankrupt or insolvent or acting in contemplation of bankruptcy or insolvency; there was, therefore, no preference in fraud of the act then given; there was no obligation on the part of these defendants to enter up their judgment earlier than they did. If the confession of judgment was good and valid when given, the defendants were entitled to all the security which it gave them, and consequently were fully authorized to take all subsequent proceedings provided by law, for realizing their debt.

The confession was given for a *bona-fide* debt, created by a loan of securities. No *preference* was created by the giving of the confession. There was no collusion in enforcing it. Such enforcement was wholly an act of the defendants to obtain payment of the debt due them, and there is no evidence that either of the firm of Dibblee & Co. knew that it was Mr. Iselin's intention to enforce his judgment until the sheriff appeared in their store, and made his levy.

Bingley and Krauss both testify directly to this point, so far as concerns themselves.

Fols. 86, p. 55 and 94, p. 60.

And as to Mr. Dibblee, see fol. 87, p. 56, and fol. 94, p. 60. There was, therefore, no "*procuring*" or "*suffering*" of their property to be taken on legal process by the bankrupts in fraud of the act.

There is no evidence that any part of the money procured on the hypothecation of the securities loaned by Iselin & Co., and for the value of which the confession of judgment was given, was directly or indirectly applied to the payment of any indebtedness due them from the bankrupts.

Iselin & Co. derived no benefit or advantage, whatever, from making this loan. No commission was charged for making it, or either directly or indirectly paid.

The fact of the levy being made by direction of the defendants, and the subsequent payment of the judgment by the tranfer of securities, show conclusively that there was no collusion between the defendants and Dibblee & Co., and that the latter did not know that the levy was going to be made; otherwise they would have satisfied the judgment before, and not waited until the proceedings of the defendants had made it impossible for them to go on in business, or to effect an amicable settlement with their creditors in case they found that they could not go on.

According to the complainant's theory, the defendants were bound to give Dibblee & Co. all the means necessary to pay the other creditors in full, and they alone were to have none of the indebtedness due them paid, and were to bear all the losses of Dibblee & Co.'s business, although they (the defendants) had derived no benefit whatever from it, whilst the other creditors were making profits on the goods

which they sold the firm, knowing full well that the making of these profits was accompanied by a risk, from which no mercantile business, done on credit, is exempt.

The act of bankruptcy must be an act of the bankrupt himself; the acts of creditors or others cannot constitute him guilty of fraud on the act.

The entry of the judgment, the issuing of the execution, and the levy on the bankrupt's property were all acts of the defendants or their agents, and were only acts of due and proper diligence on their part for the collection of the judgment debt, and a judgment properly obtained in good faith, will be protected, and all legal proceedings under it, taken by the creditor in diligent enforcement of his right to realize the debt, will be sustained.

Wilson v. *City Bank*, 17 *Wall*, 413.

Now let us see in what different position, if any, Iselin & Co. were placed by the delivering to them of the bill of sale of May 1st.

As to themselves—were they thus placed in *a better position* than they would have been in had the sheriff been permitted to sell under the execution?

The testimony of Charles Wells (complainant's witness) shows (fol. 98, p. 63) that the merchandise realized on the sale made by the assignee $55,705.09.

The testimony of the witness Handschin (fol. 130, p. 81) shows that after payment of the cash amounts of $1,900, on May 1st, there remained unsatisfied on the judgment only the sum of $43,649.52.

The merchandize on which the levy was made realized, therefore, even on a forced sale $12,056.57 more than the amount due on the judgment, thus demonstrating that such judgment would have been fully satisfied out of the proceeds of the sale, which would have been made under the execution, had such sale

proceeded, and that thus the debt due to Iselin & Co. would have been paid in full.

Now, in what position have Iselin & Co. been placed as to the payment of the debt due them, by accepting the bill of sale of May 1st, or rather the securities transferred by it, in payment and satisfaction of the judgment.

The bill of sale transferred securities amounting at their face value to $47,839.52.

The net amount realized from them at the time when the testimony was closed was $37,165.80, and there remained still due to Iselin & Co. the sum of $6,483.72, principal of the original debt, and $1,781.42 interest from May 1st, 1869, amounting in all to $8,265.14, to meet the payment of which Iselin & Co. held only $8,245.26 of the securities transferred by the bill of sale, so that they could not be paid out of the securities the debt for which they were given and taken in payment; but the small apparent loss, as shown by this statement, was largely increased, inasmuch as of the $8,245.26 of securities then remaining uncollected, $4,580.30 only were good, $301.18 were doubtful, and $3,363.79 entirely worthless.

Handschin's testimony (fols. 137 and 138, pp. 86 and 87).

It is thus, we think, most clearly demonstrated that by the accepting of the securities transferred by the bill of sale, in payment and satisfaction of the amount then due upon the judgment, Iselin & Co. were really placed in a much worse position than they would have been in had they simply rested on their judgment. Had they done so they must have been paid in fall; by accepting the securities transferred by the bill of sale, the proofs show them to have suffered an actual loss of at least $3,383.66.

III.

The advance of $54,100 on the 25th February, 1869, on the security of the confession of judgment was not only a legal transaction between the parties, but it was a valid one within the Bankrupt Act.

This is conceded in the opinion of the circuit judge, "Lending to the firm of H. E. Dibblee & Co.," says the learned judge, "$54,000, and taking security therefor, whether in the form of a confession of judgment or a pledge of promissory notes, or a bond and mortgage of real estate, was not the taking of a preference in any sense of that term used in the Bankrupt Law. * * * * The estate of the firm was enhanced for the payment of debts, or for the purposes of business, to the precise extent which it was burthened by giving of the security."

Opinion of Woodruff, C. J.

And to the same effect see *Tiffany* v. *Boatman's Institution*, 18 *Wall*, 375, where Davis, J., says:

"In a season of pressure, the power to raise ready money may be of immense value to a man in embarrassed circumstances. With it he might be saved from bankruptcy, and without it financial ruin would be inevitable. If the struggle to continue his business be an honest one, and not for the fraudulent purpose of diminishing his assets, it is not only not forbidden, but is commendable, for every one is interested that his business should be preserved. In the nature of things he cannot borrow money without giving security for its repayment, and this security is usually in the shape of collaterals. Neither the terms nor the policy of the Bankrupt Act are violated if these collaterals be taken at the time the debt is incurred. His estate is not impaired or diminished in consequence, as he gets a present equivalent for the securities he pledges for the

repayment of the money borrowed. Nor in doing this does he prefer one creditor over another, which it is one of the great objects of the Bankrupt Act to prevent. The preference at which this law is directed can only arise *in case of an antecedent debt*" (p. 388).

IV.

But the confession of judgment, though a valid, was an imperfect security; it was a power coupled with an interest, a power which Dibblee & Co. had no right to revoke.

"We hereby confess judgment, * * * and authorize judgment to be entered," &c. (fol. 5). This was also under the Code an authority at once to issue execution and levy on the debtor's choses in possession.

It was an authority given for value, as a security for a present advance.

"Where an authority or power is coupled with an interest, or where it is given for a valuable consideration, or where it is part of a security, * * * * it is in contemplation of law irrevocable, whether it is expressed to be so on the face of the instrument conferring the authority or not. The ground of this doctrine is, that a party shall not be at liberty to violate his own solemn engagement, *or to vacate his own security by his own wrongful act;* for that would be to enable him to perpetrate a fraud upon innocent persons who have placed implicit confidence in him, which is against the clearest principles of justice and equity."

Story on Ag., § 477, 482–3.

At common law a judgment was confessed by the debtor's giving a warrant or power to an attorney

to accept a declaration and plead a cognovit. And although such a warrant was, like other powers, ordinarily revoked by the death of the principal, yet the courts, to give effect to the confession, would allow judgment to be entered as of the previous term, where the debtor died in vacation (*Fuller* v. *Jocelyn*, 2 *Str.*, 882; *Nichols* v. *Chapman*, 9 *Wend.*, 452). And the courts will complete the lien where, from accident or mistake, it has failed to attach.

Lanning v. *Tompkins*, 45 *Barb.*, 308.

But here there is no question in respect to the power being revoked. It was not revoked in fact, it was irrevocable in law. As between Dibblee & Co. and Iselin & Co., if it did not operate as an assignment (*People* v. *Tioga, C. P.*, 19 *W.*, 73; *Bromley* v. *Hulland*, 7 *Ves.*, 68; *Knapp* v. *Alvord*, 10 *Paige*, 205), it created an obligation on the part of Dibblee & Co. not to defeat the security it was intended to furnish.

This is, in fact, conceded in the opinion of the circuit judge, but as Iselin & Co. did not perfect their judgment, and acquire a lien by levy, until after Dibblee & Co. found they were insolvent, and Iselin & Co. knew it, the learned judge holds that Dibblee & Co. were bound to prevent Iselin & Co. from enforcing the judgment, and that, not having done so, they suffered, and Iselin & Co. took a preference, in violation of the act.

In illustration of his view, the judge supposes the case of a loan made upon the faith of a promise to give security, a promise which, as between the parties, a court of equity would enforce, but which, if the debtor neglects to perform it till after he becomes insolvent, the bankrupt law forbids his then doing, as the giving of a preference.

But the decisions under the English bankrupt acts clearly sanction even what the learned judge so unhesitatingly condemns.

The policy of the bankrupt laws, indeed, forbids a

debtor from transferring his assets, or suffering them to be taken to *prefer* a creditor. But it permits him to effectuate securities on the faith of which he has obtained money or property which has gone to swell his assets. This is not giving a *preference*. It does not require him to do the iniquity of attempting to invalidate such securities. In *Harris* v. *Rickett*, 4 *H. & N.*, 1, the trader procured an advance on a promise to give a bill of sale to secure it if called upon to do so. He afterwards gave the bill of sale which, being attacked by the assignees, the court said that being for an antecedent debt, etc., it was, *prima facie*, an act of bankruptcy, but sustained it on the ground "that at the time of the loan which constituted the debt it had been agreed between the bankrupt and the defendant that this security should be given." This point was also ruled in *Hutten* v. *Cruttwell*, 1 *El. & B.*, 15.

Both these cases were cited as authority in *Tiffany* v. *Boatman's Institution*, 18 *Wall.*, 375.

Any promise of security which would make the security valid if given at the precise time the money is advanced, protects it if given afterwards, in pursuance of the obligation. See 1 *Archb. on Bankr.* (*Ed. of* 1867), *p.* 111; *Edwards* v. *Glyn*, 2 *El. & El.*, 29; *Sinclair* v. *Wilson*, 20 *Beav.*, 324; *Ex parte Kindred*, 29 *Law Times*, 250; *Bills* v. *Smith*, 12 *Law T., N. S.*, 22; 11 *Jur., N. S.*, 155.

In *Krehl* v. *The Great Central Gas Co.*, *Law Rep.*, 5 *Exch.*, 289, a guarantee society furnished to one **H.**, who was about to enter the service of a company, security for his fidelity, taking from him a *power*, in case of his default, to seize his goods by way of indemnity. Such a seizure was made by the guarantee company after an act of bankruptcy by H., but without notice of such act. The seizure was protected as against the assignees.

It is true the question was disposed of by a construction of the language of the English act, but it was

urged on the one side that the power was a mere license; on the other, that it was a continuing security, and this last view was the real basis of the decision. "The whole matter, and not the mere act of seizure must be looked at, and shows a taking possession of the goods, *under a license that was not revocable.*" Channell, B., p. 294.

In *Mitchell* v. *Winslow*, 2 *Story*, 630, it was held that a chattel mortgage, which was by its terms to cover subsequently acquired property, though it did not at law attach upon such property, was good in equity against the assignee in bankruptcy of the mortgagor.

V.

But it is not necessary to go to the extent of these authorities. It is sufficient that the original transaction was a fresh advance upon security, and therefore not a *preference*.

Though this security was not perfect until the confession was put on file, the judgment docketed, execution issued and a levy made, all this required no act on the part of the debtor.

The case supposed, therefore, by the learned judge of a promise to give a mortgage as security upon obtaining a loan, and neglecting to do so till after insolvency, is not in point. An apter illustration would be the giving of a mortgage at the time of the loan which the creditor should neglect to record. This neglect, where the laws require such securities to be recorded, might prevent the security being effectual. But if the debtor learned of his creditor's carelessness, would he be bound at once to go into bankruptcy, in order to defeat a security which was given and taken in good faith and for value; or would the creditor, by filing his mortgage after knowledge of insolvency in-

deed, but before actual proceedings in bankruptcy, lose the benefit of his security on the ground that the debtor was suffering and he was taking a preference?

For a creditor to perfect by his own act a security given in good faith for an advance made upon the strength of it, is not taking a preference, nor is the debtor's not actively taking steps to defeat a security given in good faith the *suffering* of a preference.

VI.

The theory of the courts below was, that as the confession of judgment given on the 25th of February did not operate to charge the debtor's property until the 30th of April, when the judgment was docketed and a levy made, the debt was in the meantime to be considered as an ordinary unsecured debt, and that therefore what was done on and after the 30th of April was on the part of the debtor the suffering, and of the creditor the taking of a preference of an unsecured debt.

Even on this view, the harsh rule applied by the courts below has been repudiated in this court.

The debt of $54,100 for which the confession of judgment was given was a valid debt, and was presently due. If an ordinary action had been commenced by Iselin & Co., they would, by the laws of New York, have recovered judgment and execution by default in twenty days, no defense being interposed, and there was none to interpose. In such case, it was held in the New York districts that it was the duty of the debtor to prevent the creditor from collecting his debt by levy of execution, and that if he neglected to do so, and the creditor proceeded, a preference was suffered and taken, and the creditor not only lost his

priority, but was debarred from proving his debt in bankruptcy.

Mayer v. *Hermann*, 10 *Bl.*, 256.
Warren v. *Tenth Nat. Bank*, id., 493.

But this court has pronounced this construction one "not justified by the words of either of the sections" of the act affecting the question, and as only to be sustained "by imputing to the general scope of the Bankrupt Act, a harsh and illiberal purpose at variance with its true spirit and with the policy which prompted its enactment."

Wilson v. *City Bank*, 17 *Wall.*, 473, 487.

VII.

Assuming, then, that the judgment of Iselin & Co. was valid, and that the levy made on the 30th of April, under the execution issued upon it, gave them a lien upon the stock of Dibblee & Co., good as against creditors proceeding in bankruptcy, the giving up by Dibblee & Co. of other assets on the 1st of May, in exchange for and in discharge of the levy did not impair the rights of Iselin & Co.

This was done for the convenience of the debtors, to save the stock from the sacrifice of an immediate sale.

It added nothing to the security of the creditors whose levy was abundantly sufficient, nor was it intended to place them in any better position than they were by their levy.

The facts show beyond dispute that the stock released from the levy was worth more than the accounts given to effect the release (*ante*, pp. 36–7), and the courts below admitted the fairness of the arrangement, so far as any question of value was concerned. "Looking to the purpose and intent of the actors in the transactions in

question," says Woodruff C. J., "the proofs fail to show any actual bad faith or want of the highest integrity in either of them;" and he condemns this particular transaction, not on the ground of any bad faith in respect to it, but simply upon the ground that to free the goods from the execution lien which he had pronounced invalid did not justify it. "The creditors had a right," says he, "to have the estate in the condition in which it was when Dibblee & Co. and Iselin & Co. became conscious of the insolvency, and of the effect of paying Iselin & Co. their debt."

An entirely different view, however, of the Bankrupt Act has been taken by this court. "A fair exchange of values," says Mr. Justice Field, "may be made at any time, even if one of the parties to the transaction be insolvent. There is nothing in the Bankrupt Act, either in its language or object, which prevents an insolvent from dealing with his property, selling or exchanging it for other property, at any time before proceedings in bankruptcy are taken against him, provided such dealing be conducted without any purpose to defraud or delay his creditors or give preference to any one, and does not impair the value of his estate. An insolvent is not bound by the misfortune of his insolvency to abandon all dealing with his property; his creditors can only complain if he waste his estate or give preference in its disposition to one over another. His dealing will stand, if it leave his estate in as good plight and condition as previously."

Cook v. *Tullis*, 18 *Wall.*, 332, 340.

VIII.

Neither of the learned judges in the District and Circuit Courts found any bad faith or fraud as against creditors in the transactions between Dibblee & Co.

and the defendants They decided in favor of the assignee, as it would appear, only because constrained so to decide by the provisions of the Bankrupt Act, and clearly could have not so decided had the late cases of *Wilson* v. *City Bank*, 17 *Wall.*, 473; *Tiffany* v. *Boatman's Institution*, 18 *Wall.*, 375, and *Cook* v. *Tullis*, 18 *Wall.*, 332, been before them.

The more benign and liberal construction given to the Act by these decisions, must lead to a reversal of so much of the decrees appealed from as is adverse to Iselin & Co.

The bill of the assignee should have been dismissed, with costs.

HENRY W. CLARK,
S. P. NASH,
Of Counsel for Defts.

CIRCUIT COURT OF THE UNITED STATES

For the Southern District of New York.

JAMES R. CLARK, Jr., Assignee of Henry E. Dibblee et al.,

vs.

ADRIAN ISELIN et al.

CROSS-APPEALS.

OPINION OF WOODRUFF, CIRCUIT J.

Circuit Court

OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JAMES R. CLARK, ASSIGNEE, &c.,

vs.

ADRIAN ISELIN ET AL.

Cross Appeals.

CHAS. H. SMITH,
For Complainant.
HENRY W. CLARK, and
STEPHEN P. NASH,
For Defendants.

WOODRUFF, Circuit J.:

The uncharitable prejudice which regards every one who does not pay his debts as a knave, and esteems any one who has befriended him a conspirator to defraud others, may, perhaps, find reasons for most unjust imputations upon the defendants in this cause.

They are, in my opinion, wholly unwarranted by the proofs; on the contrary, looking to the purpose and intent of the actors in the transactions in question, the proofs fail to show any actual bad faith or want of the highest integrity in either of them.

The assignment made to Iselin & Co., May 1st, 1869, was, I think, a violation of the provisions of the Bankrupt Law in the sense, that by that law it was invalid; but even this was, I think, made under a real misapprehension, in the mistaken belief that it was proper and in the discharge of a valid lien which it was for the interest of the insolvent firm and its creditors to remove from their stock of goods then in the possession of the sheriff.

I think there was nothing in the transactions prior to that date which was liable to any imputation either as fraudulent in fact or as contravening the provisions of the Bankrupt Law. Lending to the firm of H. E. Dibblee & Co. $54,000 and taking security therefor, whether in the form of a confession of judgment or a pledge of promissory notes, or a bond and mortgage of real estate, was not the taking of a preference in any sense of that term as used in the Bankrupt Law.

Had the firm on the 25th of February, 1869, applied to an insurance company or an individual having funds, for a loan upon bond and mortgage, and receiving the loan had given the security, no one could say that an illegal preference had been given. In that case, and equally in the case of the loan made by A. Iselin & Co. here, the firm received the whole amount for which the lenders took security. The estate of the firm was enhanced for the payment of debts or for purposes of business to the precise extent which it was burthened by the giving of the security. Its balance sheet remained the same.

If, then, Iselin & Co. had been content to rest on

the security they then had, I think their position would have been safe from impeachment on any ground; whether they could, after knowledge or reason to believe that H. E. Dibblee & Co. were insolvent, proceed (on the authority given on the 25th of February) to enter up judgment and levy and collect the amount by execution, is, however, a different question. They would at least have been permitted to prove the debt against the estate of the bankrupts, even if the proceedings in bankruptcy had intervened to prevent their having the benefit of the authority to enter up a judgment.

Prior to the entry of judgment Iselin & Co. had in their hands an instrument authorizing the entry of a judgment, but had in fact no lien upon the property of the firm. This instrument was called a security, but it was in truth only a means or instrument placed in their control by which security and payment might be effected. It contemplated the possible necessity of being made effective, but it was in itself only inchoate, and so long as it remained in the hands of Iselin & Co. it had no legal operation, and vested in them no right of property in any part of the estate of the debtors, either absolute, qualified or contingent.

In this condition of Iselin & Co. and Dibblee & Co. the proof shows, I think, that both Dibblee and Iselin became satisfied that the firm of the latter was insolvent, and then attempted to make the instrument previously executed effectual.

It may be conceded that it would have been a violation of good faith for Dibblee to do anything to prevent Iselin & Co. from obtaining full security by means of a judgment; it may even be conceded that as between Iselin & Co. and Dibblee & Co. the former had acquired an unquestionable right, both legal and equitable, to enter up judgment and enforce it; but this is not the test of their right as against creditors, when Dibblee & Co. were adjudged bankrupt. Iselin & Co. had obtained no actual preference when the affairs of

Dibblee & Co. reached such a condition that Dibblee must have known and Iselin had cause to believe, and I think did believe, that the debtors were insolvent, and entered up the judgment for obtaining the actual security and preference which it was in his power to effect through the instrument theretofore executed.

In this point the case does not differ from an example readily suggested.

Suppose Iselin & Co. had made a loan upon a promise by Dibblee, in proper legal form, to give a bond and mortgage as security whenever required. It would be bad faith in Dibblee thereafter to refuse to give the bond and mortgage as a valid security. And yet if, before it was given, Dibblee became or was insolvent, and Iselin became aware of it, the performance of the provisions would have been in fact a giving and receiving a preference, and not less so because of the previous promise; so of a promise to give a judgment, and so of a writing actually delivered to Iselin & Co., but not made effective.

As against creditors, the right to carry the promise or the intention into effect is defeated; as against them, the actual gaining of the preference is forbidden.

In the case of the promised bond and mortgage, I think this would not be questioned, and I perceive no distinction between the cases. As against the debtors, a Court of Equity would enforce their duty to make the contemplated security, and in the absence of any conflicting rule, that court would consider that done which ought to be done, and so give effect to the intended security as of the time when the loan was made. But when the provisions of an express statute have intervened, and the exigency has arisen in which the statute declares the right of creditors to an equal distribution of the property, I think the creditor who has in the meantime relied upon an executory promise, or upon his possession of what is practically a mere authority to acquire and enforce a lien, must rest

where he finds himself. To thus give or take the preference is prohibited.

This is not all. On the first of May, after the insolvency of the firm was clear, the debtors made an actual transfer of assets for the payment of the debt to Iselin & Co., and consented that the latter obtain further payment by redeeming other assets from banks to whom they were pledged for less than their value. This was a clear preference of Iselin & Co. Whatever motive in respect to liberating the stock of goods from the levy of the execution may have prompted it, freedom from the lien of the execution was an inducement to this transfer, but did not justify it. The creditors of the bankrupts had a right to have the estate in the condition in which it was when Dibblee & Co. and Iselin & Co. became conscious of the insolvency, and of the effect of paying Iselin & Co. their debt.

These views result in an affirmance of the decree made below, so far as the surplus of the assets redeemed from banks, the cash payment of nineteen hundred dollars, and the transfer of the notes and accounts mentioned in the assignment of the first day of May, 1869, were declared void as against the complainant, and so far also as it excludes Iselin & Co. from proving the debt thereby attempted to be paid.

As to the sum of $2,229.08, also decreed to be paid to the assignee, I am not able to discover from the proofs, nor from the stipulation made by the parties, when this surplus (over and above the amount due to Iselin & Company upon their previous advances) accrued. If they had collected it, and held it at or before the filing of the petition in bankruptcy against Dibblee & Co. was filed, then they are entitled to retain it and to apply it on the debt which was secured or attempted to be secured by the judgment.

That debt was and still is a valid debt against the bankrupts, notwithstanding the creditors are not per-

mitted to prove it against the estate in the hands of the assignee, and if the moneys referred to had been collected so as to constitute a debt from Iselin & Co. to Dibblee & Co., by overpayment or collection on the securities for the other advances, then their claim against the bankrupts, for which the judgment was confessed, was a valid set-off thereto, and Iselin & Co. should not be required to pay over that surplus to the assignee. The Bankrupt Law allows and requires such set-off. Any collections in excess of the advances for which they were specifically pledged, made after the filing of the said petition, were collections for the account of the assignee, and as to them, no such right of set-off exists. As this point was not urged by counsel as an impeachment of the decree, I conclude that the sum of $2,229.08 in question was so collected.

If so, the decree must be affirmed, and as both parties have appealed, neither should be allowed costs as against the other.

Evening Post Steam Presses, 41 Nassau, Street, cor. Liberty. N. Y.

Supreme Court

OF THE UNITED STATES.

James R. Clark, Jr., Assignee of Henry E. Dibblee and others. Bankrupts,
Appellant,

vs.

Adrian Iselin and Isaac Iselin,
Appellees.

Brief for the Plaintiff below on his Appeal from the decree of the Circuit Court for the Southern District of New York.

STATEMENT.

This was a bill in equity brought to set aside certain payments and transfers of property made by the bankrupts Dibblee & Co. to the defendants Iselin as invalid under the Bankrupt Act, and to recover the property or the proceeds thereof. The bill was originally filed in the District Court for the Southern District of New York. Upon the hearing in that court a decree was made granting in part the prayer of the

bill, and refusing in part to grant the relief asked for by the complainant.

See fols. 163, 170.

From this decree an appeal was taken by each party to the Circuit Court, where the decree of the District Court was in all things affirmed.

See fol. 207.

From this decree of the Circuit Court both parties have appealed to the Supreme Court of the United States.

The bill was filed on or about the 2d day of October, 1869. The defendants Iselin answered, a replication was filed to the answer, and proofs were taken. The decree of the District Court was made January 12th, 1872, and the decree of the Circuit Court November 25th, 1872.

The defendants Dibblee & Co. failed or became publicly and notoriously insolvent, and their property was seized by an execution issued by the defendants Iselin & Co. on the 30th of April, 1869. A petition under the Bankrupt Act, to put them in involuntary bankruptcy was filed on the 3d day of May, 1869, and after a trial an adjudication of their bankruptcy was entered on the 2d day of June, 1869.

The errors complained of by the appellant Clark in the decree of the Circuit Court are as follows:

The refusal of the court below to set aside—as contrary to the Bankrupt Act and in fraud of its provisions—certain transfers of property and securities and payments made by the bankrupts to the defendants Iselin between March 23d and April 30th, 1869.

These payments and transfers were as follows:

1. The payments of the loans included in what is called "The new loan account."

See fol. 129, p. 80.

These loans and their payment occurred as follows:

$5,000 loaned March 8, 1869.	$5,000 paid March 29, 1869.
$10,000 loaned March 6, 1869.	$4,000 paid April 2, 1869.
$5,000 loaned March 8, 1869.	$3,000 paid April 6, 1869.
$108.32 interest.	$3,000 paid April 30, 1869.
$5,000 paid March 23, 1869.	$108.32 interest paid April 30, 1869.

These loans were unsecured and were voluntarily paid.

2. The transfer to Iselin & Co., to secure an existing debt, of bills receivable and accounts to the amount of $62,030.34, on the 5th of April, 1869.

See fols. 63, 64, 173.

3. Another transfer of similar securities made by the bankrupts to Iselin & Co, April 8, 1869. This was nominally to secure a loan or discount of $8,000 made by Iselin & Co. to Dibblee & Co. on that day, the proceeds of which, however, we claim, were used for a payment of interest upon a pre-existing debt to Iselin & Co.

See fols. 64, 142.

4. A transfer to Iselin & Co by the bankrupts of 51 notes, amounting to $25,385.60, on the 27th of April, 1869.

See fol. 65.

These notes were delivered to Iselin & Co. to secure the old debt of $61,000, and the discount of $8,000, made April 8, 1869, and professedly to replace other collaterals, nominally transferred to Iselin & Co., but which had really been retained and collected by the bankrupts.

See fols. 63, 64, 65, 173.

There are other transfers pointed out in the bill and the petitions of appeal, but they are parts of the transactions stated above, and are not insisted upon as separate and distinct errors.

It is contended that during the period covering all these payments and transfers and extending back to all the transactions which led to them, Dibblee & Co. were insolvent and acting in contemplation of insolvency, and that Iselin & Co. had reasonable cause to believe them so, and that the intent of both Dibblee and Iselin was to prefer the Iselins in each of these transfers, and to prevent their property coming to the assignee in bankruptcy, and to defeat and evade the operation of the Bankrupt Law.

STATEMENT OF FACTS.

The history of the relations between these parties goes back to the year 1855. In that year a firm doing business under the name of H. E. Dibblee & Co., composed of Henry E. Dibblee, Richard G. Clark and Addison G. Bickford, was formed to do a jobbing business in dry goods. On the 15th of September, 1862, that firm failed and made an assignment for the benefit of its creditors whose claims amounted to upwards of $300,000, and included Iselin & Co. for upwards of $45,000, of which $30,000 was preferred. The assignee paid about ninety *per cent.* of the preferred debts in the assignment, which amounted to about $116,000, and then, by consent of the creditors, reassigned on the 24th of May, 1865, to the assignors, most of the debts having been bought up by Mr. Adrian Iselin. An agreement was then made between Mr. Adrian Iselin and the assignors, reciting this new transfer, and that Mr. Iselin had purchased nearly all, and expected to purchase the whole, of the remaining debts, and providing that the proceeds of the assets, after paying the

preferred debts and Mr. Iselin's advances, should be divided, fifteen per cent. to Dibblee & Co., and the residue equally between Dibblee & Co. and Mr. Iselin.

See fols. 65 to 69, 71 to 84.

After the close of this business, the second firm of Henry E. Dibblee & Co. was formed on the 1st day of January, 1866, between Henry E. Dibblee, John J. Krauss and David P. Bingley. Mr. Dibblee contributed $20,000 capital, the other partners nothing. Mr. Adrian Iselin advanced $25,000 for the benefit of this firm, or as part of its capital, and took as security for it the assignment (fol. 68), dated the 11th of January, 1866, by Mr. Dibblee, of all the latter's interest in the assets of the former firm of H. E. Dibblee & Co., under the agreement for the division of the ultimate profits or proceeds in the settlement of that firm.

The firm of H. E. Dibblee & Co., formed on the 1st day of January, 1866, commenced business at No. 19 Murray street and 21 Park place, in the city of New York, and continued there until the 28th day of May, 1866, when they were burned out. Their stock of goods was a total loss, not covered by insurance.

See fol. 85.

After the fire they took an office at 31 Park place, and had no goods until the last of July 1868 (same folio). In the middle of August 1868, about the 17th, they removed to 349 Broadway. They then commenced purchasing goods with the aid, direct and indirect, of Iselin & Co., and for the purpose, as we contend is manifestly proved, of forwarding the interests of that firm as well as their own. It was proved from the books of Dibblee & Co., by an examination made by an expert, that the firm were insolvent to the extent of at least $75,000, on the 1st day of August, 1868, and for months previous, and that they continued so insolvent in January and February, 1869, and down

to the period of their final stoppage, which occurred on the last of April or the 1st of May, in that year.

See fol. 99.

No attempt was made to contradict or impeach this statement, and neither Mr. Dibblee nor Mr. Iselin was called as a witness.

In August, 1868, Mr. Adrian Iselin having returned from Europe, found that H. E. Dibblee & Co. had become indebted to his firm, at various dates, for sums amounting in all to $61,000 in round numbers, which was then due, and for which the firm of Iselin & Co. held no security. The Bankrupt Act having previous to that time gone into effect, it was impossible for Dibblee & Co. to protect Mr. Iselin by an assignment with preference. Therefore, Mr. Iselin, as was stated by his counsel upon the argument in the Circuit Court, knowing that he could no longer be protected by a preference in an assignment, took measures to protect himself as well as he could under the Bankrupt Act. At this time, it will be observed, the firm only occupied an office, and had no goods to sell, having lost their stock by fire, without being covered by insurance. Mr. Iselin then took notes from Dibblee & Co. for $53,000 on the 6th of August, 1868, discounting them and applying the proceeds, as we say, to liquidate the old debt, or in part payment thereof, and subsequently in the same manner Mr. Iselin discounted a note of Dibblee & Co. for $8,000, and applied the avails of this note also to the reduction of the old debt, or to pay the interest upon it.

See fols. 52 and 53.

With these notes, amounting in all to $61,000, there was pretended to be pledged to A. Iselin & Co., bills receivable of Dibble & Co., to the amount of $63,983.-96.

See fol. 53.

These collaterals were never transferred or delivered in point of fact to Iselin & Co. They remained in the hands of H. E. Dibblee & Co. Every dollar of them that was ever collected was collected by Dibblee & Co., and used by them in their business just as if they owned it, and like all other bills receivable.

See fol. 63.

Iselin never received one dollar on any collateral up to the 5th of April, 1869. The notes of Dibblee & Co., given for the $61,000, which matured in September, October, November and December, 1868, were renewed from time to time, and new lists of collaterals were from time to time handed to Iselin & Co., the same course of dealing being pursued with reference to all the pretended collaterals throughout the whole period down to April 5th, 1869. It will also be observed that the notes said to have been originally delivered or pledged by Dibblee & Co. to Iselin & Co., on the 6th of August, 1868, were long past due, and over $29,000 of the amount is now in the hands of the assignee in bankruptcy, and substantially worthless as they were at the date of transfer.

See fols. 48, 49, 53.

No entries were ever made upon the books of Dibblee & Co., to show that these notes which were from time called collaterals to Iselin & Co., were ever delivered to that firm. The money collected by Dibblee & Co. upon them was regularly entered in their cash book and issued in their business without distinction between that and any other money of Dibblee & Co.

See fol. 49.

On the 5th of April, 1869, Iselin & Co. pretend that they held $65,013.15 of collaterals for the notes of Dibblee & Co. discounted in August, 1868, or their renewals. Of this $65,000 the whole had been, in point of fact, collected, and the money used by Dibblee &

Co., and nothing remained in the hands of Dibblee & Co. to which Iselin & Co. had even a nominal or pretended claim or title with the exception of the following amounts: $758 76, which was paid in April; $348.77, which was paid in May; $3,666.31, which was afterwards assigned to Iselin to secure another debt, and $6,829.65, which was worthless and is still unpaid.

When things were in this condition, on the 5th day of April, 1869, a letter was prepared and signed by Dibblee & Co. (see fol. 62), requesting permission of Iselin & Co. to withdraw this $65,013.15 of pretended collaterals, and on that day they delivered to Iselin & Co. notes and open accounts, the avails of sales mostly made in March and April amounting to $62,030.34.

See fols. 63, 64.

These are the notes and accounts the proceeds of which, among others, the complainant sought to reach by this bill, and as to which the bill was dismissed in the courts below. Again, on the 8th of April, 1869, Iselin & Co., discounted Dibblee & Co.'s note for $8,000, and placed with Iselin & Co. $10,050.53 of notes and open accounts as collateral for this discount. It is claimed by the complainant that this was a renewal of a portion of the debt originally incurred in August, 1868, or that the proceeds of this note were used to pay the interest on that debt. Finally, between the 5th and 8th of April and the 27th of April Dibblee & Co. took $23,696.26 of the collaterals which had been pledged or placed with Iselin & Co. for these last transactions, and replaced them with fifty-one notes, the avails of sales made principally in March and April, 1869, amounting to $25,385.60.

See fols. 64, 65.

This was done mostly on the 27th of April, 1869. On the 30th of April, 1869, the sheriff took possession of the store and the goods of Dibblee & Co., under a levy issued on a judgment given by confession by

Dibblee & Co., to Iselin and Co. The confession of judgment was signed by Henry E. Dibblee alone, in behalf of the firm, without the knowledge or authority of either of the other partners, Bingley or Krauss, was dated and sworn to on the 25th of February 1869, was retained by the Iselins without being entered until the 30th of April, 1869, when it was entered in the judgment book, and on the same day an execution issued under which the seizure was made.

See fols. 4 to 8.

On the 1st day of May, 1869, Dibblee & Co. turned over and transferred to Iselin & Co. bills receivable and property to the amount of $47,839.62, upon and from which $41,478.67 was afterwards collected and received by the Iselins, and in consideration of this payment the Iselins released their levy and countermanded the execution which they had issued upon their jndgment.

See fols. 100, 101, 102.

The court below set aside this last transaction, and decreed that the Iselins should account to the assignee in bankruptcy for the proceeds of the notes, accounts and securities thus transferred to them on the 1st of May, 1869, in satisfaction of the execution levied by them on the property of Dibblee & Co. after deducting the expenses incurred by them properly in making the collection; but refused to set aside the transfers made in April of notes and accounts to secure the $61,000 debt which had been kept running from August, 1868.

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POINTS.

I.—The notes discounted by Iselin in August, 1868, were a mere renewal of the original $61,000 due to his firm on open account, and thus wholly unsecured. The transaction was not, in reality, a loan or discount at that time, but a mere contrivance to accomplish under the Bankrupt Act, what would have been done by an assignment with preferences, or a transfer or preferential security of some sort, or judgment, had not that law been passed.

This debt continued down to the 5th of April, 1869, wholly open and unsecured. The pretended transfer of collaterals was a mere fraud and sham. The evidence shows that these so-called collaterals were openly retained, the proceeds collected and money used by Dibblee & Co. in their business, just as all other bills receivable of their house.

Of the original so-called collaterals a very large portion, if not the whole, were due and unpaid at the time of the first transfer, and the whole transaction was an attempt by Iselin to escape the penalties of the Bankrupt Act, bolster up the credit of what he knew to be a failing house, and enable them to keep along, so that he might ultimately, at all events, secure the payment of his debt.

II.—The court below sustained these transactions between the 5th and the 29th of April, 1869, by which this large amount of good bills receivable was turned out to Iselin & Co. in payment of or to secure an old debt, wholly upon the ground that they were mere exchanges of collaterals. But we respectfully submit that the fallacy of this is evident. There were, in point of fact, in the possession of Iselin & Co., or belonging to them, at the time when the letter of 5th

of April was written, and when these contrivances began to take effect, no collaterals whatever, and this debt being, as it was, an antecedent and an old debt, stood uncovered and unprotected.

The transactions in question, therefore, began with transfers of the property of Dibblee & Co., to secure or satisfy an antecedent debt due from them to Iselin & Co., made in the month of April, 1869, when their firm had for months past been hopelessly insolvent. Of this fact of the insolvency of Dibblee & Co. there is no doubt and no denial.

III.—If such a state of facts was brought to the notice of Iselin & Co. respecting the affairs and pecuniary condition of Dibblee & Co. as would lead them, as prudent business men, to believe that the debtors could not meet their obligations as they matured, and could not pay their debts, or if the means of such knowledge of the debtor's insolvency were at hand, and such facts were known to Iselin & Co. as should have put them, as prudent business men, on inquiry, then they had reasonable cause to believe Dibblee & Co. to be insolvent within the meaning of the Bankrupt Act.

See Buchanan *agst.* Smith, 16 Wall, 277.

That they did have such information and notice is beyond dispute. Mr. Iselin and Mr. Dibblee were the two men who knew all about the affairs of this firm from the beginning. Mr. Iselin held a secret confession of judgment by Dibblee by which he expected when the time came to appropriate all the available assets of the firm. He had $25,000 dollars invested in the firm in effect as capital, and knew that besides Dibblee & Co. had only $20,000 capital.

IV.—The evidence shows that Iselin & Co. were substantially the backers and only creditors of Dibblee & Co. throughout the whole of their career under their latter partnership, having $25,000, which is called by some of the witnesses special capital, invested in the business of Dibblee & Co., having full access to their books, entire knowledge of their concerns, and controlling their action in regard to securities and sales, suffering them at the same time to receive the proceeds of all their bills receivable, although nominally transferred to Iselin & Co. as collateral, under some express or implied understanding that these favored creditors should in any event be protected.

V.—These transfers in April, 1869, were made upon the very eve of bankruptcy, while the confession of judgment was hanging over the firm of Diblee & Co., and with the manifest purpose of preventing the property thus transferred from coming to the assignee in bankruptcy, or being reached by the operation of the Bankrupt Act, and of securing and preferring to this extent the creditors thus favored.

VI.—It will be remarked, as has been already stated, that neither Mr. Iselin nor Mr. Dibblee offered themselves as witnesses for the defendants in this action, and it should also be added that Mr. Dibblee alone controlled and managed the business of the firm of H. E. Dibblee & Co., and that neither of the other partners, neither Bingley nor Krauss, were suffered to inquire or know anything of the financial affairs of that firm, or to interfere with the direction or management of Mr. Dibblee at any time.

VII.—The acts of Iselin & Co., which were relied on in the court below, and will probably be presented here, as showing his confidence in the solvency of the firm of Dibblee & Co., his purchasing paper of that firm in the summer and fall of 1868, and the fact that another firm, Barbey & Co., in which he was a special partner, had made sales to Dibblee & Co., entirely failed to prove that Iselin & Co. were not aware or did not have notice of the insolvency or contemplated insolvency of the firm of H. E. Dibblee & Co. at the time of these transactions. There is no proof that Mr. Iselin, the special partner, ever advised his firm of Barbey & Co. to make these sales to Dibblee & Co., or that he was aware of them. Mr. Iselin was fully informed of the limited means and hazardous condition of the firm of Dibblee & Co. from the outset. He had made a handsome profit out of his transactions with the old firm, and was, therefore, willing to make an advance to the new firm upon a similar understanding (as this was previous to the passage of the Bankrupt Act) as to his security in the future. The purchases by Iselin of notes of Dibblee & Co. were obviously made and continued as long as Mr. Iselin did not think the risk too great, for the purpose of keeping up the credit of the firm of Dibblee & Co., and with the expectation and belief that these notes would at all events be protected, Mr. Iselin being considered as the confidential creditor of the firm. The case shows that this expectation was not disappointed. These notes were all paid, and the last of them, we contend, were paid with the proceeds of the advances made by Iselin to Dibblee, in February, 1868, and for which judgment was confessed by the latter in the name of the firm.

By means of the credit thus given Dibblee & Co. by Mr. Iselin by his purchase of their notes in the market, they were enabled to buy a considerable stock of goods in the spring of 1869, which they sold, and when the final catastrophe became imminent and could no

longer be averted, the bills receivable representing the sales and proceeds of this large stock of goods were turned over to Iselin & Co. to secure their old debt of $61,000, and the notes purchased by them in market in the fall of 1868.

VIII.—It is submitted that the court below erred in not granting the prayer of the complainant's bill to the full extent, and in sustaining transactions which are manifestly transfers of good securities and assets made by an insolvent firm to a creditor aware of their insolvency, within a month of their final bankruptcy, to secure or satisfy an unsecured pre-existing debt. Such a transaction comes plainly within the condemnation of the Bankrupt Law as it was in force in May, 1869.

It makes no difference if it were understood and agreed that Iselin should be kept always secured for these debts, if, in point of fact, that was not done.

The transfers of securities in April, 1869, and especially that by which, on the 5th of April, $65,000 of good notes were turned over to Iselin, were admittedly to secure a then pre-existing debt. We say that the original sham deposit of securities, in August 1868, was to secure a debt previously contracted, and not for a new loan. But, however this may be, in April, 1869, the debt was an old one. And from the necessities of Dibblee, with the knowledge and consent of Iselin, it had become, and indeed had constantly been, an unsecured debt. When, therefore, Dibblee took $65,000 of assets and handed them to Iselin, in April, 1869, when he was insolvent and on the verge of bankruptcy, and Iselin knew it, he was not making an exchange of securities, but turning over his property to one creditor in preference to the others; defeating the operation of the Bankrupt Law, and preventing these assets coming to the assignee.

2 Mass
429.

Such a transfer is within the 35th and 36th sections of the Bankrupt Law.

IX.—It will not save such transactions that they were done under an agreement made at the outset that such security should be given.

It is not competent for a debtor to agree with a creditor that if the latter will make a loan or advance, the debtor will turn over to him whenever it becomes necessary—that is when bankruptcy is imminent—property to pay or secure his debt.

To so explain the law would be to open wide the door to fraud, and to defeat the Bankrupt Act.

It will be observed that the bill was amended so as explictly to cover these transactions (see fol. 160).

See Graham *v.* Stout, 3 Nat. Bank. Reg. Rep., 357.

Harry *v.* Crane, 5 Ib., 218.

X.—These principles or the application of them to this case will show, we submit, that it was the duty of the court below to set aside all the transactions to which we have now called the attention of this court.

The transactions referred to all occurred after March 23d, and most of them after April 5.

The last took place on the 27th of April, 1869. During all this period it is undisputed that Dibblee & Co. were insolvent.

It is obvious that their final stoppage and bankruptcy was then only a question of time, and of a very short time.

It is shown beyond dispute that Iselin & Co. were aware of facts which would lead any reasonable man

to the conclusion, and that they had the means of knowledge of the fact, that the debtors were insolvent at the time.

The transactions themselves were not within the usual course of business of Dibblee & Co. or of a solvent firm.

The security was unusual, and whenever enforced or made available, would necessarily produce bankruptcy, and put an end not only to the business, but to the existence of Dibblee & Co.

These payments and transfers were all of them to secure pre-existing debts, and they were preferences of the defendants.

The debts of Iselin were in fact unsecured when these transfers were made, and a mere promise to secure them or keep them secured, not observed or performed, will not justify a preference by insolvent debtors on the eve of bankruptcy, both parties being plainly aware of the facts.

XI.—The decree should be reversed in the particulars complained of by the appellant Clark, and a decree entered in confirmity with the prayer of the bill.

JAMES EMOTT,
Of Counsel for James R. Clark, Jr.,
Assignee, &c., Appellant.

EVENING POST STEAM PRESSES, 41 Nassau Street, cor. Liberty, N Y

Supreme Court

OF THE UNITED STATES.

ADRIAN ISELIN AND ISAAC ISELIN,
Appellants,

agst.

JAMES R. CLARK, JUNIOR, ASSIGNEE of Henry E. Dibblee and others,
Appellee.

Brief for Appellee, Complainants in the Court below.

Statement of Facts.

The decree of the Circuit Court for the Southern District of New York, from which this appeal is taken by the defendants in the court below, set aside as invalid and contrary to the provisions of the Bankrupt Law, certain transfers of property and payments made by Henry E. Dibblee & Co., the bankrupts, to the defendants A. Iselin & Co., on the 1st of May, 1869 (see

fol. 100). The property and money thus transferred, and which is reached by the decree, consisted (as fixed in amount by the stipulations of the parties—see fol. 171, p. 101) of the following assets of the bankrupt firm :

Bills receivable, accounts, scrip, &c., net value, after deducting expenses of collection, &c.	$39,768 31
Securities which had been loaned or sold to H. E. Dibblee & Co. by A. Iselin & Co. on the 28th of February, 1868, and pledged by them to various banks, &c., for money borrowed, net value, after redeeming the securities &c., from hypothecation	9,223 50
Cash paid to A. Iselin & Co., May 1st, 1869	1,900 00
To which add a surplus in the hands of A. Iselin & Co., after applying securities, which had been turned over to them by the bankrupts in April, 1869, to the debts intended to be paid by these securities, (see appeal of complainant below)	2,229 08
Add interest, as allowed by the decree	7,125 56
Making the total amount	$60,246 45

decreed to be repaid by the defendants A. Iselin & Co. to the complainant as assignee of the bankrupts.

These payments and transfers were made by the bankrupts to pay a debt then in judgment, recovered by A. Iselin & Co., upon confession of H. E. Dibblee, for and in the name of the bankrupt firm of H. E. Dibblee & Co., and to obtain the discharge of an execution which had been issued on that judgment and levied upon all the partnership property, stock and assets of Henry E. Dibblee & Co., on the 30th of April, 1869. Upon receipt of this payment and transfer the

execution was countermanded, and satisfied on the 4th of May, 1869. On the 3d of May, 1869, a petition was filed by other creditors to put the defendants H. E. Dibblee & Co. in bankruptcy, and an adjudication of bankruptcy passed upon them, after a trial, on the 2d of June, 1869. The case is reported upon the trial and adjudication of bankruptcy as "*In re* Dibblee," 2 National Bankrupt Register Repts., 617. The present case is reported in the Circuit Court for the Southern District of New York, in 9 National Bankrupt Register Rep., 19, Clark *against* Iselin.

The history of the particular transactions leading to this confession of judgment, execution, levy and payment is as follows: On the 25th of February, 1869, A. Iselin & Co. were applied to by Dibblee for a loan. Iselin & Co. were unable to furnish the money, but sold or delivered to Dibblee & Co. stocks and securities, the actual value of which at that time was $54,000 (see fol. 150). Henry E. Dibblee, without the knowledge of his copartners, but in the name of the firm, thereupon executed to Iselin & Co., to secure this advance, a confession of judgment, or paper upon which judgment could be entered according to the laws of New York, which will be found set out in the bill, at fol. 4. This confession of judgment was kept by Iselin & Co., and no one except themselves and Henry E. Dibblee—not even the other partners of Dibblee—knew anything about it, until the 30th of April, 1869. Then, the bankruptcy of Dibblee & Co. being imminent, the confession of judgment was filed, a judgment entered and an execution issued, under which the stock of goods in the possession of Dibblee & Co. was seized. This seizure was an entire surprise to the partners of Mr. Dibblee (see fol. 86). After this seizure was made, an arrangement was entered into between Dibblee & Co., the bankrupts, and Iselin & Co., the creditors holding this judgment and execution, by which money, notes, accounts and insurance scrip, some cash and the securities which had been furnished

fol. 100). The property and money thus transferred, and which is reached by the decree, consisted (as fixed in amount by the stipulations of the parties—see fol. 171, p. 101) of the following assets of the bankrupt firm :

Bills receivable, accounts, scrip, &c., net value, after deducting expenses of collection, &c.	$39,768 31
Securities which had been loaned or sold to H. E. Dibblee & Co. by A. Iselin & Co. on the 28th of February, 1868, and pledged by them to various banks, &c., for money borrowed, net value, after redeeming the securities &c., from hypothecation	9,223 50
Cash paid to A. Iselin & Co., May 1st, 1869	1,900 00
To which add a surplus in the hands of A. Iselin & Co., after applying securities, which had been turned over to them by the bankrupts in April, 1869, to the debts intended to be paid by these securities, (see appeal of complainant below)	2,229 08
Add interest, as allowed by the decree	7,125 56
Making the total amount	$60,246 45

decreed to be repaid by the defendants A. Iselin & Co. to the complainant as assignee of the bankrupts.

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to Dibblee & Co. by Iselin in Febuary, subject to the lien of the various parties who had loaned money upon them, amounting in all, as stated above, to $50,891.81, were paid, transferred and delivered to the defendants Iselin in satisfaction of this judgment and the debt secured by it, and in order to procure the release of the levy made upon it. This transaction the District Court condemned as a violation of the Bankrupt Law, and a fraud upon the rights of creditors under it, and decreed that the defendants Iselin should account for the value or proceeds of the property thus received by them with interest (see fols. 163–176). The decree of the District Court was affirmed upon appeal by the Circuit Court (fols. 206–207).

The bill of complaint was amended so as to reach, with particularity, all these transactions (see folio 160.)

The condition of the bankrupt's estate and of the firm of H. E. Dibblee & Co., at and for some time previous to their stoppage is exhibited in the testimony at fol. 96–100.

It appears that, on the 2d of June, 1869, the date of the adjudication of bankruptcy, H. E. Dibblee & Co. owed, exclusive of what they owed Iselin & Co., $202,810.72.

The whole nominal amount of bills receivable and accounts due the bankrupts, which came to the hands of the assignee, was $104,735.57, but of this, all but about $20,000 had been due since a period before February, 1868, and most of it for years. These bills and accounts were substantially worthless; only $10,546.86 has been collected from the whole $104,000, so that Iselin & Co. in the transactions which they completed with the bankrupts, during the few months before their stoppage, and at the time of their bankruptcy, obtained and appropriated all their bills receivable and accounts of any value. There was left only the stock of goods on hand, which, by good management, produced $55,705.09; more than the Iselins sup-

posed it would when they relinquished their levy and took the entire remaining available assets of the concern, except the goods, to pay their debt.

It does not appear that at the time of the bankruptcy Iselin & Co. held any claims against Dibblee & Co. which were not covered or secured by the collaterals, which they had before that period from time to time, as disclosed by the evidence, obtained from the debtors. They had thus succeeded, notwithstanding the Bankrupt Act, as they supposed, in making themselves preferred and protected creditors for all their debts. The only exception to this, if there be any, seems to be the $25,000 originally contributed by Iselin substantially to the capital of Dibblee & Co. (see fols. 84, 89, 92.)

It will be noticed that neither Henry E. Dibblee nor the Iselins ventured to testify in the case.

POINTS.

I.—The judgment thus confessed by one partner in the name of the firm without the knowledge or consent of his associates, was valid only as a judgment against the partner so acting, and was not, under the law of New York, a valid judgment against the firm. If it had any effect on the firm, it would be to extinguish its debt and convert it into a debt against Dibblee alone ; and at all events the confession of judgment was not an agreement by the firm of such a character as to bind all the partners to execute or give at any time the security which a judgment against the firm would be, for the loan or advance made on the 25th of February, 1869.

The whole transaction was a fraud by Dibblee upon his copartners.

See Wilson *agst.* Robertson, 21 N. Y., 587.
Lambert *v.* Converse, 22 How. N. Y. P. R., 265.
Bridenbacker *v.* Mason, 16 Ib., 204.
Everson *v.* Gehrman, 10 Ib., 301.

II.—The confession or instrument upon which the judgment was finally entered in favor of Iselin & Co. against Dibblee & Co. was not executed to secure a debt incurred, or a loan or advance made on the 25th of February, 1869, the date of the paper. If this is so, there remains no foundation whatever for the appellant's argument, which is that the judgment entered April 30 is valid because it was entered in pursuance of an agreement for such a security, or a continuing power to perfect it, given at the time when the creditor parted with his money.

On the 24th of February Dibblee & Co. owed Iselin & Co. $47,784.51 for notes of the former, purchased undoubtedly with the purpose, and certainly with the effect, of keeping up the credit of the insolvent firm, and as plainly with entire confidence that Mr. Iselin would in any event be protected.

These notes, to the amount of $47,784.51, all became due between February 24th and March 25th, 1869.

See p. 89, fol. 183.

On the 25th of February, 1869, Iselin & Co. placed in the hands of Dibblee stocks and securities to the nominal amount of $58,000, and of the market value of $54,000.

P. 81, fol. 130.

Upon these stocks and securities Dibblee & Co. borrowed $46,000.

Same folio.

Of the notes held by Iselin $1,601.40 was paid on the 24th February.

All the residue were paid at or before their maturity, between Feb. 25th and March 24th. They amounted to within a very few dollars of the amount borrowed by Dibblee on Iselin's securities.

See fol. 38, p. 20.

There is no proof that the bankrupts had any other means to pay those notes. Nor is there any evidence that the money raised on these securities was acquired or used for any other purpose.

It is a legal and logical inference, that the money raised on the securities of Iselin was used to pay the debts then due him, and that the advance of those securities was made for that purpose.

The transaction was an evasion. It was not a *bona fide* loan, in the actual course of business, for which security was taken at the time. It was a contrivance by which, in effect, the creditor obtained security at that time for his existing debt, merely changing its form.

Scammon *vs.* Cole, 3 Nat. B. R. Rep., 393, 409.

And the security was an extraordinary one—not in the usual course of business, and one which, of itself, is evidence both of the debtor's precarious condition and of the creditor's knowledge of it.

Scammon *vs.* Cole, q. s.

Wallbrun *vs.* Barrett, 16 Wall., 577.

III.—But it is sufficient that the debtor was hopelessly insolvent and on the verge of bankruptcy when the *confession* was filed and the judgment entered. If it be admitted that a new and original debt was contracted by Dibblee to Iselin, on the 25th of February, 1869; that the transaction of that date was not merely the payment of an antecedent indebtedness, and that the judgment would have been valid if entered then, yet this will not justify the entry of judgment or the use of the authority for that purpose on the 30th of April.

Then it was used to secure and accomplish a preference of an existing debt. Then both parties confessedly knew the insolvency of Dibblee, and the confession of the judgment was in itself an act of bankruptcy.

The preference by means of the judgment was not given or obtained when the paper authorizing the judgment was executed and delivered to the creditors, but when it was used and the judgment was entered. Until then there was only a continuing consent or authority; the act was done when the authority was used, and the validity of the act depends upon the conditions existing at that time.

Golson *vs.* Neihoff, 5 Nat. B. R. Rep., 56, 60.
Hood *vs.* Kaifer, Ibid, 358.
In re F. C. Lord, Ibid, 318, 328.
Bank Leavenworth *vs.* Hunt, 11 Wall., 392.

Tested by this rule and these conditions, it is clear that the decree appealed from is right.

IV.—Even the judgment, however, may be passed by The entry of judgment, whether made in February

or April, would have been harmless but for the issue of an execution upon it; and the question is not precisely whether the judgment would be set aside, but whether the seizure of property under it on the 30th of April—when the debtors, insolvency was confessed and their bankruptcy imminent, and was precipitated by the very act—can be sustained. If the judgment had been entered before, the obtaining a preference then by an execution and levy under it, would have been a violation of the Bankruptcy Act.

Vogel *vs.* Lathrop, 4 Nat. B. R. Rep., 439.
Thornhill *vs.* Link, 8 Ibid, 521.

No levy and seizure made, as this was under a judgment in which the debtor was a voluntary actor and not a merely passive instrument—made to defeat the Bankrupt Act, to prefer Isèlin & Co., and to prevent the goods seized from going to the assignee in bankruptcy, when both parties shared the purpose, and both knew the insolvency and imminent bankruptcy of the debtors—can be sustained.

V.—No doctrine of relation will be recognized by the courts, which would make an act which was invalid and a fraud upon the Bankrupt Law at the time when it occurred, legal and valid, because it was promised or agreed to previously, when the circumstances of the parties were different.

If the doctrine contended for by the defendants finds even a partial support in some English cases under the special provision of the English statutes (see 12 and 3 Vict., c. 106, § 133), it has no authority in this country.

In the language of Judge Hall, in Graham *vs.*

Stark, 3 Nat. B. R. Rep., 357: "The doctrine would defeat the purposes of the Bankrupt Act. It would be easy, in any case where it was desired to give a fraudulent preference to a favored creditor, to make a contract for such a security when called for. Such agreements would be in effect secret liens upon the property of the bankrupt, and enable him to effect the objects generally effected before the Bankrupt Law under provisions to secure relators and indorsers against loss in any event, by assignments for the benefit of such favored creditors."

So Mr. Justice Field, speaking for this court, in The Bank of Leavenworth *cs.* Hunt, 11 Wall., 391, said: "The subsequent sale, even if made in pursuance of the agreement, did not take effect by relation at its date. Transfers of personal property situated as in this case, only take effect as against creditors from the delivery of the property to the purchaser."

See also *In re* Eldridge, 2 Biss., 362, 4 Nat. B. R. Rep., 498.

Harvey *cs.* Crane, 5 Nat. B. R. Rep., 218.

To sustain a sale or seizure upon the eve of bankruptcy, on account of a previous agreement for security or payment in that way, it must be not only for a debt contracted *de novo* in reliance upon it, but in the ordinary course of business, and the circumstances and conditions of parties must have remained unchanged. No new rights or equities must have been intervened. In other words, the sale or the seizure must be tested by the facts when possession was taken, when the power was executed, when the purpose ripened into an act, and the agreement was consummated by the delivery of property.

VI.—But the transaction which was set aside by the decree was even more than this. If the confession and entry of judgment, and the issuing of the execution and seizure of all the bankrupt's goods could be sustained, still the defendants could not impeach the decree.

They went further than to confess a judgment and suffer a seizure, after they had committed an act of bankruptcy, they paid this debt of Iselin & Co. by turning over to the latter all their good assets, their bills receivable and accounts.

It is not material that the Iselins in fact reaped no advantage from this payment or transfer of securities. If they had not expected to do so, and if it had not been intended that they should, the transfer would not have been made.

The assignee in bankruptcy had a right to the property of the bankrupts in an unchanged condition. He might have contested the levy, stayed the sale of the goods, and had the goods or their proceeds in court, to abide the event. The bankrupts and their favored creditors had no right to turn him over to an action against parties who might or might not be responsible, to recover the value of property to which they had no right.

VII.—Judge Woodruff, in his opinion in the Circuit Court, while evidently disposed to treat the motives and conduct of these parties with the utmost leniency, is compelled to pronounce an emphatic condemnation of the transactions of April 30 and May 1.

The perfecting judgment and issuing execution he condemns as unwarranted by the continuing authority in the hands of the creditors, in view of the exigency which had arisen, and the rights of other creditors which had intervened.

The transfer of bills receivable for the payment of the debt, and the consent to further payments by assenting that Iselin might redeem other assets from banks to which they were pledged for less than their value, was a clear preference of Iselin & Co.

See opinion of court below, Clark *v.* Iselin, 9 Nat. Bank. Reg. Rep., 19, 24.

VIII.—In every aspect the decree, so far as it was against the defendants, and so far as they have appealed from it, is correct, and should be affirmed.

JAMES EMOTT,
Of Counsel for
James R. Clark, Jr., Assignee, &c.,
Appellee.